1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES
3 DEPARTMENT 308 HON. CHARLES MC COY, JUDGE
4 RICHARD BOEKEN,)
5 PLAINTIFF,)
6)
) CASE NO. BC226593
7 VS.)
8 PHILIP MORRIS,)
INCORPORATED, A)
9 CORPORATION; INTERNATIONAL)
HOUSE OF PANCAKES)
10 INCORPORATED, A)
CORPORATION.
11)
DEFENDANTS.)
12 _____)
13 REPORTER'S DAILY TRANSCRIPT OF PROCEEDINGS
14 MONDAY, APRIL 23RD, 2001
15 APPEARANCES:
16 (FOR PLAINTIFF) LAW OFFICES OF
MICHAEL J. PIUZE
17 11755 WILSHIRE BLVD.
SUITE 1170
18 LOS ANGELES, CA 90025
19 (FOR DEFENDANTS) ARNOLD & PORTER
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LISA C. RIDLEY
23 OFFICIAL REPORTER
600 S. COMMONWEALTH AVE.
24 ROOM 308
LOS ANGELES, CA 90005
25
VOLUME 21 OF
26 PAGES 3359 THROUGH 3439
27
28
3359
1 LOS ANGELES, CALIFORNIA; MONDAY, APRIL 23RD, 2001
2 1:30 P.M.
3 DEPARTMENT 308 HON. CHARLES MC COY, JUDGE
4
5 (THE FOLLOWING PROCEEDINGS
6 WERE HELD IN OPEN COURT IN
7 THE PRESENCE OF THE JURY.)
8
9 THE COURT: OUR JURY PANEL IS WITH US
10 ALTHOUGH I UNDERSTAND THAT SEVERAL HAVE -- WELL,
11 WHAT WE ARE GOING TO DO IS, YOU WILL BE OUT OF HERE
12 BY 4:00 AND FOR THOSE OF YOU WHO AREN'T FEELING
13 WELL, GO HOME AND HAVE SOME GOOD CHICKEN SOUP. MY
14 MOTHER ALWAYS USED TO GIVE ME CHICKEN SOUP. YOU
15 WILL BE FEELING BETTER.
16 OUR JURY PANEL IS WITH US.
17 COUNSEL ARE PRESENT AS WELL.
18 GOOD AFTERNOON, COUNSEL, IT'S GOOD
19 TO SEE YOU.
20 OUR WITNESS IS ON THE WITNESS

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21 STAND.
22 MA'AM, YOU UNDERSTAND YOU ARE STILL
23 UNDER OATH.
24 THE WITNESS: YES.
25 THE COURT: THANK YOU.
26 MR. PIUZE.
27 /// /// ///
28 /// /// ///
3360
1 JUDY BOEKEN,
2 CALLED AS A WITNESS BY THE PLAINTIFF, HAVING BEEN
3 PREVIOUSLY DULY SWORN, RESUMED THE WITNESS STAND
4 AND TESTIFIED FURTHER AS FOLLOWS:
5
6 DIRECT EXAMINATION (RESUMED)
7
8 BY MR. PIUZE:
9 Q. YOU ARE COUGHING TOO. DID I MAKE
10 YOU SICK TOO?
11 A. YES.
12 Q. I APOLOGIZE.
13 IS YOUR HUSBAND IN THE BUILDING
14 TODAY?
15 A. YES.
16 Q. DID YOU THINK IT BEST THAT HE NOT
17 COME IN HERE TODAY?
18 A. YES.
19 Q. REASON, PLEASE.
20 A. WELL, WHEN WE LEFT THE OTHER DAY,
21 HE STARTED TO CRY IN THE CAR AND HE SAID --
22 Q. EXCUSE ME FOR ONE SECOND.
23 DON'T TELL US WHAT HE SAID.
24 A. OH, WELL, I FELT THAT HE SHOULDN'T
25 HEAR WHAT I SAY BECAUSE IT UPSET HIM THE OTHER DAY.
26 Q. OKAY. HERE'S WHERE WE WERE FRIDAY
27 AFTERNOON AT 4 O'CLOCK.
28 IT HAD TO DO WITH THE FACT THAT
3361
1 YOUR SON, YOUR YOUNGEST SON, HAS AN IDEA WHAT'S
2 GOING ON.
3 A. YES.
4 Q. YOU MENTIONED SOMETHING ON FRIDAY
5 ABOUT STEROIDS AND I THINK, NOT TRUSTING YOUR
6 HUSBAND WITH YOUR YOUNGEST SON, WHAT DID YOU MEAN
7 BY THAT?
8 A. I MEANT THAT THE STEROIDS MAKE HIM
9 SICK AND BECAUSE HE DOESN'T FEEL WELL, HE IS MORE
10 IRRITABLE AND LESS PATIENT AND HE WAS NEVER LIKE
11 THAT WITH MY SON BEFORE. SO I LIKE TO BE AROUND.
12 Q. THE POINT I AM TRYING TO GET AT IS
13 ARE YOU AFRAID OF PHYSICAL VIOLENCE?
14 A. NO.
15 Q. WHAT IS IT THEN?
16 A. JUST MAYBE OVER PROTECTIVE, BUT
17 JUST NOT -- JUST WANTING TO BE THERE TO HANDLE ALL
18 THE SITUATIONS WITH MY SON, FEEDING HIM OR -- AND
19 HELPING HIM WITH HIS HOMEWORK OR TELLING HIM TO
20 TAKE A SHOWER JUST BECAUSE THE STEROIDS MAKE MY
21 HUSBAND MORE -- MAKE HIM SHORT-TEMPERED AND
22 IMPATIENT WHERE HE WAS NOT LIKE THAT BEFORE.
23 Q. OKAY.
24 TAKE A LITTLE TIME, A COUPLE
25 PARAGRAPHS' WORTH, AND TELL US -- DOESN'T MATTER TO

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26 ME WHETHER IT IS THE CANCER OR WHETHER IT'S THE
27 DRUGS THAT YOUR HUSBAND IS TAKING FOR THE CANCER OR
28 WHETHER IT'S THE STEROIDS, WHETHER IT'S ANY
3362
1 COMBINATION, I DON'T CARE WHAT IT IS, BUT I'D LIKE
2 YOU TO TELL THE JURY HOW ALL OF THIS HAS AFFECTED
3 HIS, LET'S START OFF WITH MENTAL ABILITIES. IS HE
4 AS SHARP AS HE WAS, IS HIS MEMORY AS GOOD AS IT
5 WAS, STUFF LIKE THAT TOO?
6 A. HE'S VERY SICK. NEVER SEEN HIM
7 THIS SICK. HE'S SICK FROM THE CANCER AND HE'S SICK
8 FROM THE MODALITIES THAT THEY USE TO TREAT THE
9 CANCER. HE CAN'T HANDLE SITUATIONS, PROBLEMS, AS
10 HE USED TO.
11 I USED TO SAY, GIVE HIM A PROBLEM,
12 BECAUSE HE WAS THE TYPE THAT COULD PICK UP THE
13 PHONE, YOU KNOW, HANDLE ANY SITUATION WITH NO -- NO
14 PROBLEM. AND NOW HE DOESN'T -- HE ISN'T ABLE TO
15 HANDLE ANY SITUATIONS. HE'S VERY -- HE CAN'T
16 FOCUS. HE CAN'T CONCENTRATE. HE'S VERY WEAK.
17 HE'S VERY TIRED AND HE SLEEPS MOST OF THE DAY
18 BECAUSE HE CAN'T SLEEP AT NIGHT BECAUSE, I THINK,
19 BECAUSE HE'S AFRAID HE WILL DIE.
20 Q. HE'S AFRAID HE WON'T WAKE UP IF HE
21 GOES TO SLEEP?
22 A. YES. WE TALKED ABOUT THAT.
23 Q. SO YOU ANSWERED THE QUESTION I
24 WANTED AND YOU GOT INTO ONE OF THE NEXT ONES TOO,
25 WHICH WAS GOING TO BE HOW HAS ALL OF THIS AFFECTED
26 HIS PHYSICAL ABILITIES, AND WHY DON'T YOU TALK
27 ABOUT THAT A LITTLE BIT.
28 A. A LOT. HE'S THE TYPE THAT IS ALSO,
3363
1 HAS ALWAYS BEEN HANDY AROUND THE HOUSE. HE CAN FIX
2 ANYTHING. NOW HE DOESN'T HAVE THE STRENGTH OR THE
3 MOTIVATION AND THE STEROIDS MAKE -- HAVE MADE HIS
4 SKIN VERY THIN. AND DOING THE SLIGHTEST TYPE OF
5 PHYSICAL ACTIVITY MAKES HIM BRUISE AND BLEED. HE'S
6 ALL MARKED UP.
7 Q. SO WHEN YOU SAY HIS SKIN IS THIN,
8 HE'S THIN-SKINNED, YOU ARE TALKING LITERALLY,
9 PHYSICALLY, HE'S THIN-SKINNED?
10 A. PHYSICALLY AND EMOTIONALLY.
11 Q. BOTH?
12 A. YES.
13 Q. WHAT ABOUT HIS MEMORY, HAVE YOU
14 SEEN CHANGES IN YOUR HUSBAND'S MEMORY SINCE HE
15 STARTED TAKING ALL OF THE STUFF THAT HE IS TAKING?
16 A. DEFINITELY. I USED TO SAY THAT HE
17 WAS MY MEMORY. NOW HE CAN'T REMEMBER ANYTHING.
18 SO, YES, HIS MEMORY HAS BEEN
19 AFFECTED. I TELL HIM SOMETHING AND A LITTLE WHILE
20 LATER HE DOESN'T REMEMBER THAT.
21 Q. ALL RIGHT. I AM SORRY TO
22 INTERRUPT. GO AHEAD.
23 A. ALSO, HE CAN'T -- WELL, MAYBE I
24 SAID THIS BEFORE, BUT HE CAN'T COPE WITH DAILY
25 SITUATIONS WHICH USED TO NOT EVEN BE A BIG DEAL TO
26 HIM BEFORE.
27 Q. WHEN YOU SAY THAT YOUR HUSBAND
28 SLEEPS MOST OF THE DAY, I GUESS MOST OF THE DAY
3364
1 WOULD BE IF HE SLEPT 12 HOURS AND ONE MINUTE OUT OF

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2 THE DAY, THAT WOULD BE MOST OF THE DAY. WHAT DO
3 YOU HAVE IN MIND WHEN YOU SAY HE SLEEPS MOST OF THE
4 DAY?
5 A. THE WHOLE TIME -- WHEN WE ARE NOT
6 COMING HERE, PRACTICALLY THE WHOLE TIME MY SON IS
7 AT SCHOOL, SO FROM 8:00 TO 3:00 OR 4:00.
8 Q. HOW LONG AGO WAS IT THAT YOUR
9 HUSBAND WAS DIAGNOSED WITH LUNG CANCER?
10 A. IN OCTOBER OF 2000.
11 Q. HOW ABOUT OCTOBER '99?
12 A. OCTOBER '99. YEAH, IT'S BEEN A
13 YEAR AND A HALF THAT WE HAVE BEEN GOING THROUGH
14 THIS.
15 Q. WHEN WAS HE DIAGNOSED WITH BRAIN
16 CANCER?
17 A. IN THE SUMMER, AROUND AUGUST.
18 Q. IS THAT BRAIN OR BACK?
19 A. FIRST THE SPINE AND THEN BRAIN.
20 Q. WHEN THE SPINE?
21 A. AUGUST, SEPTEMBER.
22 Q. WHEN THE BRAIN?
23 A. VERY SHORTLY AFTER THE SPINE, LESS
24 THAN A MONTH LATER.
25 Q. AFTER YOUR HUSBAND WAS DIAGNOSED
26 WITH LUNG CANCER BUT BEFORE IT SPREAD TO HIS SPINE
27 AND BEFORE IT SPREAD TO HIS BRAIN, TO YOUR EYES,
28 DID HE PUT ON AT LEAST A BRAVE FRONT?
3365
1 A. A HUNDRED PERCENT. HE WAS SO
2 STRONG, "I AM GOING TO BEAT THIS, I AM GOING TO
3 BEAT THIS." AND ALL HIS OUTLOOK TOWARDS THE FUTURE
4 WAS FOR LIFE.
5 Q. IS HE STILL PUTTING ON A BRAVE
6 FRONT?
7 A. NO, NO.
8 Q. WHEN YOUR HUSBAND FIRST GOT
9 DIAGNOSED WITH LUNG CANCER, SOMETIME AROUND WHEN HE
10 HAD HIS OPERATION IN HIS LUNG, DID HE STOP SMOKING?
11 A. YES, HE DID STOP SMOKING.
12 Q. WHEN DID HE START AGAIN?
13 A. HE STARTED TO TAKE PUFFS WHEN HE
14 FOUND OUT ABOUT HIS SPINE AND THEN STARTED TO SMOKE
15 AGAIN WHEN HE FOUND OUT ABOUT HIS BRAIN, BECAUSE OF
16 BEING SO SCARED AND THEN HE DIDN'T ACT BRAVE ANY
17 MORE, HE ACTED DEFEATED.
18 IT WAS LIKE, WELL, I DID EVERYTHING
19 AND NOT EXPECTING IT TO BE -- EXPECTING IT TO BE
20 OVER, NOT -- HE CRACKED COMPLETELY AND WHEN HE WAS
21 ON THE COUCH DURING THE DAY, AND I AM WITH HIM, AND
22 I AM WONDERING IF HE IS DYING, RIGHT THEN, RIGHT
23 THEN. AND I DON'T KNOW IF HE, YOU KNOW, IS HE
24 DYING RIGHT NOW.
25 Q. OKAY. I THINK I AM DONE.
26 THANKS.
27 THE COURT: FROM THE DEFENSE.
28 MR. LEITER: THANK YOU, YOUR HONOR.
3366
1 CROSS-EXAMINATION
2
3 BY MR. LEITER:
4 Q. GOOD AFTERNOON, LADIES AND
5 GENTLEMEN.
6 GOOD AFTERNOON, MRS. BROKEN.

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A. GOOD AFTERNOON.
Q. I JUST HAVE A FEW QUESTIONS FOR YOU.
YOU HAVE THREE CHILDREN?
A. YES.
Q. AND WHEN WAS DAVID BORN?
A. 1970.
Q. AND WHEN WAS DAMIEN BORN?
A. 1974.
Q. AND WHEN WAS DYLAN BORN?
A. 1991.
Q. NOW, DID YOU STOP SMOKING WHEN YOU WERE PREGNANT EACH TIME?
A. YES.
Q. AND YOU DIDN'T SMOKE THE WHOLE TIME YOU WERE PREGNANT?
A. I WOULD IN THE BEGINNING, I WOULD TRY TO SMOKE AND FOUND, BECAUSE I COULDN'T STOP, HAD FOUND THAT IT MADE ME NAUSEOUS AND DIZZY AND SICK SO I DIDN'T SMOKE.
Q. SO WHEN YOU WERE PREGNANT WITH DAVID AND DAMIEN, AND THAT'S LATE 1960'S, EARLY

3367

1970'S, YOU STOPPED SMOKING BECAUSE IT WAS MAKING YOU FEEL ILL; RIGHT?
A. YES.
Q. AND YOU STOPPED SMOKING UNTIL THE PREGNANCY, UNTIL THE BABIES WERE BORN; RIGHT?
A. YES.
Q. AND THEN YOU STARTED SMOKING AGAIN; IS THAT RIGHT?
A. YES.
Q. NOW, WHEN YOU WERE PREGNANT WITH DYLAN, ABOUT 1990?
A. YES, AND THEN HE WAS BORN IN OCTOBER OF '91.
Q. OKAY. YOU STOPPED SMOKING WHEN YOU WERE PREGNANT WITH DYLAN TOO; RIGHT?
A. AGAIN, I DID SMOKE AT FIRST BUT FELT ILL FROM IT SO I THINK I STOPPED.
Q. BUT BY THE TIME YOU WERE PREGNANT WITH DYLAN, YOU ALSO KNEW THAT SMOKING WOULD BE UNHEALTHY FOR THE BABY; RIGHT?
A. YES.
Q. AND YOU STOPPED SMOKING THAT TIME BECAUSE YOU KNEW THAT SMOKING WOULD BE UNHEALTHY FOR THE BABY; RIGHT?
A. I WANTED TO NOT SMOKE. I WANTED TO BE PERFECT. BUT IT WAS, I FOUND IT VERY DIFFICULT TO STOP.
Q. BUT YOU DID STOP?

3368

A. FEELING ILL, YOU KNOW, THEN I DID STOP.
Q. AND YOU KNEW THAT SMOKING WAS UNHEALTHY FOR THE BABY YOU WERE CARRYING; RIGHT?
A. I DIDN'T A HUNDRED PERCENT BELIEVE THAT BECAUSE I HAD HEARD THAT, FOR INSTANCE, SMOKING DURING PREGNANCY CAUSED LOW BIRTH RATES BUT I HAD HAD -- I HAD MY SON HADN'T -- HAD BEEN OVER SEVEN POUNDS AND OVER EIGHT POUNDS, SO I WASN'T -- I WAS A SMOKER. SO I DIDN'T WANT TO, YOU KNOW, SO I LOOKED FOR REASONS TO NOT BELIEVE WHAT THEY SAID.

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Q. WHEN YOU WERE PREGNANT WITH DYLAN,
YOU KNEW THAT SMOKING WHILE YOU WERE PREGNANT WOULD
BE UNHEALTHY FOR THE BABY; RIGHT?
A. YEAH.
Q. AND YOU KNEW THAT IT COULD LEAD YOU
TO LOWER BIRTH RATE; RIGHT?
A. NO. I HAD HEARD THAT BUT I
DIDN'T -- I WASN'T CONVINCED OF IT BECAUSE I HADN'T
HAD LOW BIRTH RATE BABIES.
Q. AND YOU HAD HEARD THAT FROM THE
NEWS; RIGHT?
A. YES.
Q. BUT IN 1990, WHEN YOU WERE
PREGNANT, OR '91, YOU WEREN'T SURE YOU BELIEVED IT;
RIGHT?
A. BECAUSE I WASN'T A SMOKER, I
DIDN'T -- AND I HAD HAD HEALTHY WEIGHT BABIES, AND

3369

BECAUSE I WAS A SMOKER, I DIDN'T WANT TO -- WANT TO
BELIEVE THAT WAS TRUE.
Q. MY QUESTION WAS SIMPLY, DID YOU
BELIEVE IT OR DIDN'T YOU BELIEVE IT OR YOU
DIFFERENT KNOW?
A. I DIDN'T KNOW.
Q. DID YOU EVER DISCUSS WITH
MR. BOEKEN WHEN YOU WERE PREGNANT WITH DYLAN THAT
SMOKING COULD BE BAD FOR THE BABY?
A. NO.
Q. NEVER CAME UP?
A. NO.
Q. NOW, SINCE DYLAN WAS BORN AND THAT
WAS 1991; IS THAT RIGHT?
A. YES.
Q. YOU HAVE HAD A RULE IN YOUR HOUSE
THAT PEOPLE CAN'T SMOKE AROUND DYLAN, ISN'T THAT
RIGHT?
A. YES.
Q. AND WHY DID YOU MAKE THAT RULE?
A. I HAD HEARD, AGAIN, ON THE NEWS,
THAT IT WOULD BE UNHEALTHY FOR HIM.
Q. DID YOU BELIEVE THAT IT WOULD BE
UNHEALTHY FOR HIM?
A. I WASN'T SURE BUT I DIDN'T WANT TO
TAKE ANY CHANCES.
Q. SO EVEN THOUGH YOU WEREN'T SURE,
YOU THOUGHT IT WAS THE PRUDENT THING TO DO; RIGHT?

3370

A. PRUDENT OR PRUDE?
Q. PRUDENT, THE WISE THING TO DO?
A. YES. I THOUGHT THAT IT WAS, BY
NOW, I THOUGHT THAT, BY THAT TIME, I THOUGHT THAT
IT WAS GROSS TO BE, SMOKE IN THE AIR AROUND A BABY.
Q. DID YOU DISCUSS THAT RULE WITH
MR. BOEKEN?
A. WE AGREED, YES. WE AGREED WE WOULD
NOT SMOKE RIGHT ON TOP OF HIM OR IN THE SAME ROOM,
GO IN A DIFFERENT ROOM.
YES, WE DISCUSSED IT BECAUSE, FOR
INSTANCE, THE SISTER SMOKED AND, A LOT, AND IT WAS
THE TYPE OF PERSON WHO WOULDN'T CARE ABOUT BEING
CONSIDERATE UNLESS YOU STAYED ON HER CASE AND SO
MAINLY HAD TO DISCUSS IT WHEN SHE WAS GOING TO BE
AROUND.

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17 Q. DID YOU DISCUSS WITH MR. BOEKEN WHY
18 IT WOULD BE A GOOD IDEA TO HAVE THAT RULE OF NO
19 SMOKING AROUND DYLAN?
20 A. DID I DISCUSS IT WITH HIM? I
21 THINK -- I DON'T THINK IT WAS LIKE A BIG
22 DISCUSSION. IT WAS JUST THAT I DIDN'T WANT LOTS OF
23 SMOKE AROUND DAVID. HIS MOTHER ALSO SMOKED A LOT.
24 AND SO IT JUST WASN'T A BIG DISCUSSION, I JUST SAID
25 IT.
26 Q. DID MR. BOEKEN FOLLOW THE RULE?
27 A. HE DID THEN.
28 Q. NOW, YOU HAVE BEEN A SMOKER SINCE
3371
1 YOU WERE 17 OR 18 YEARS OLD; IS THAT RIGHT?
2 A. YES.
3 Q. YOU STARTED WHEN YOU WERE ABOUT 17
4 OR 18?
5 A. YES.
6 Q. AND YOU MET MR. BOEKEN IN WHAT
7 YEAR?
8 A. 1977. NO, I MEAN -- NO. WAIT.
9 YEAH, 1977.
10 Q. 1977. AND I KNOW YOU TALKED ABOUT
11 THAT A LITTLE BIT IN YOUR TESTIMONY HERE. IN 1977
12 WHEN YOU MET MR. BOEKEN, YOU WERE A SMOKER; RIGHT?
13 A. YES.
14 Q. AND MR. BOEKEN WAS A SMOKER; RIGHT?
15 A. YES.
16 Q. NOW, SINCE YOU AND MR. BOEKEN HAVE
17 BEEN TOGETHER, HE TRIED, FROM TIME TO TIME, TO QUIT
18 SMOKING; IS THAT RIGHT?
19 A. YES.
20 Q. AND YOU TRIED, FROM TIME TO TIME,
21 TO QUIT SMOKING, IS THAT RIGHT?
22 A. YES.
23 Q. AND A COUPLE OF TIMES, I THINK YOU
24 MENTIONED THIS DURING YOUR DIRECT EXAMINATION, YOU
25 AND MR. BOEKEN WENT TOGETHER TO SMOKERS' ANONYMOUS
26 MEETINGS; RIGHT?
27 A. YES.
28 Q. WELL, FROM THE BEGINNING OF YOUR
3372
1 MARRIAGE TO THE TIME OF MR. BOEKEN'S DIAGNOSIS WITH
2 LUNG CANCER, DO YOU HAVE THAT TIME PERIOD IN MIND?
3 A. YES.
4 Q. BEGINNING -- YOU GOT MARRIED ABOUT
5 1981?
6 A. YES.
7 Q. LET'S SAY, 1999, DID YOU AND
8 MR. BOEKEN EVER TALK ABOUT THE HEALTH RISKS OF
9 SMOKING?
10 A. NO.
11 Q. NOT ONCE?
12 A. NO. WE WERE JUST LIKE BOTH DIEHARD
13 SMOKERS AND THE ATTEMPTS HE MADE WERE BECAUSE HE
14 HAD -- HE MADE MANY ATTEMPTS BECAUSE HE HAD
15 BRONCHITIS.
16 Q. AND THE SUBJECT OF WHETHER SMOKING
17 COULD CAUSE DISEASE OR SHORTENS ONE'S LIFE JUST
18 NEVER CAME UP?
19 A. NO.
20 Q. I WANT YOU TO KEEP THAT SAME TIME
21 PERIOD IN MIND FROM THE TIME YOU WERE MARRIED,

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1981, TO MR. BOEKEN'S DIAGNOSIS IN 1999, DID YOU AND MR. BOEKEN EVER TALK ABOUT WHETHER SMOKING IS ADDICTIVE?
A. I PROBABLY SAID SOMETHING TO HIM WHEN DAMIEN, MY MIDDLE SON, WAS IN JUNIOR HIGH AND PROBABLY TAKING HEALTH CLASS AND THEY STARTED TO TEACH THAT CIGARETTES WERE -- THEY CLUMPED

3373

CIGARETTES WITH ALCOHOL AND DRUGS, AND BEING A SMOKER. BUT MY CHILDREN, KNOWING I WAS CLEAN AND SOBER AND IN A.A., AND NOT YET BELIEVING CIGARETTES WERE A DRUG, I WAS ANGRY THAT THEY SAID CIGARETTES WERE A DRUG BECAUSE I DIDN'T WANT MY CHILDREN TO THINK I USED A DRUG.
AND I REMEMBER SAYING, YOU KNOW, BEING ANGRY ABOUT THAT AND SAYING SOMETHING TO MY HUSBAND BUT, ACTUALLY, YOU KNOW, IT WAS NOT A DISCUSSION, JUST MY SAYING MY OPINION.
Q. AND IS THAT THE SAME INCIDENT THAT YOU TALKED ABOUT ON FRIDAY WHERE YOU AND YOUR HUSBAND GOT KIND OF ANGRY WITH DAMIEN?
A. IT WAS -- I GOT MAD AT HIM FOR CRUSHING MY PACKS OF CIGARETTES.
Q. BUT IT'S THE SAME INCIDENT THAT WE ARE TALKING ABOUT; RIGHT?
A. SAME TIME PERIOD, YEAH.
Q. OTHER THAN THAT INCIDENT, AT ANY TIME FROM 1981 WHEN YOU GOT MARRIED TO 1999 WHEN MR. BOEKEN WAS DIAGNOSED, DID YOU AND MR. BOEKEN TALK ABOUT WHETHER CIGARETTE SMOKING WAS ADDICTIVE?
A. NO.
Q. AND AGAIN, I WANT TO HAVE MY QUESTIONS APPLY TO THAT WHOLE TIME PERIOD, DID YOU EVER TALK ABOUT THE HEALTH WARNINGS THAT APPEAR ON THE CIGARETTE PACKS?
A. NO.

3374

Q. DID YOU EVER TALK ABOUT THE HEALTH WARNINGS THAT APPEAR ON CIGARETTE ADVERTISEMENTS?
A. NO.
Q. DID YOU EVER TALK ABOUT ANTI-SMOKING MESSAGES THAT WERE ON BILLBOARDS OR TELEVISION OR WHEREVER?
A. ONLY IF, AGAIN, WAS SAYING THAT IT WAS MAKING ME ANGRY THAT THEY WOULD CLASSIFY CIGARETTES WITH DRUGS AND ALCOHOL BECAUSE I DIDN'T WANT TO CONSIDER MYSELF USING A DRUG SINCE I CONSIDER MYSELF CLEAN AND SOBER.
Q. OTHER THAN THAT, WHAT YOU HAVE TOLD US ABOUT, AT ANY OTHER TIME, DID YOU TALK WITH MR. BOEKEN ABOUT ANTI-SMOKING MESSAGES THAT YOU MIGHT HAVE SEEN IN MAGAZINES OR ON TELEVISION OR ON BILLBOARDS?
NEVER CAME UP?
A. NO.
MR. LEITER: I DON'T HAVE ANY OTHER QUESTIONS. THANK YOU.
THE COURT: COUNSEL?

REDIRECT EXAMINATION

BY MR. PIUZE:
Q. JUST A COUPLE FROM ME.

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27 WERE THERE A COUPLE OF TIMES DURING
28 YOUR MARRIAGE THAT HAD ABSOLUTELY NOTHING AT ALL TO
3375
1 DO WITH PREGNANCY WHEN YOU, PERSONALLY, QUIT
2 SMOKING?
3 A. YES.
4 Q. FOR HOW LONG?
5 A. I STOPPED TWICE FOR A WHOLE YEAR.
6 TWO DIFFERENT OCCASIONS, FOR A WHOLE YEAR.
7 Q. THIS HAD NOTHING AT ALL TO DO WITH
8 PREGNANCY?
9 A. NO.
10 Q. HAD NOTHING AT ALL TO DO WITH
11 FEELING NAUSEOUS WHEN YOU SMOKED A CIGARETTE?
12 A. NO.
13 Q. WHY?
14 WHY TWICE DID YOU STOP?
15 A. BY THIS TIME, IT HAD REACHED -- THE
16 HEALTH MESSAGES HAD INFILTRATED ALCOHOLICS
17 ANONYMOUS AND A BIG HEALTH WAVE KICK, AND SO IT WAS
18 SORT OF GETTING ON THE BAND WAGON WITH THAT.
19 Q. OKAY. WELL, IF YOU, TWICE, STOPPED
20 SMOKING FOR AN ENTIRE YEAR, AND THIS HAD NOTHING TO
21 DO WITH PREGNANCY, WHY IN THE WORLD DID YOU RESUME?
22 A. THE FIRST TIME I JUST BECAME SO
23 EXTREMELY ANXIOUS THAT I WENT TO MY CIGARETTES. IT
24 WOULD BE EXACTLY LIKE AN ALCOHOLIC WHO, ON THEIR
25 OWN, WAS ON THE WAGON AND THEN, YOU KNOW, GOT UPSET
26 OVER SOMETHING AND RAN TO THE LIQUOR STORE FOR A
27 BOTTLE. THAT'S EXACTLY WHAT I DID.
28 Q. SECOND TIME?
3376
1 A. SECOND TIME THAT I STOPPED MY
2 HUSBAND WAS STILL SMOKING AND THERE WERE CIGARETTES
3 AROUND THE HOUSE AND THEY WERE JUST LYING THERE ON
4 THE TABLE AND I WAS UPSET ABOUT SOMETHING AND TOOK
5 A CIGARETTE.
6 Q. IN ONE OF THOSE TWO ANSWERS YOU
7 USED THE WORD "ANXIOUS." THE WAY YOU USED THAT
8 WORD, WHAT DO YOU MEAN?
9 A. EXTREMELY AGITATED, EXTREMELY
10 EMOTIONAL.
11 Q. IS THAT THE END OF YOUR ANSWER?
12 A. CRAVING SOMETHING TO CALM DOWN.
13 Q. CIGARETTES CALM YOU DOWN?
14 A. UH-HUH.
15 Q. MADE YOU LESS EMOTIONAL?
16 A. THEY USED TO MAKE ME LESS ANXIOUS.
17 Q. SO I THINK THIS IS THE END OF THE
18 LINE WITH MY QUESTIONING RIGHT HERE. WITH ALL OF
19 THE A.A. MEETINGS YOU HAVE GONE TO, STARTING WAY
20 BACK WHEN, I GUESS YOU HAVE SEEN PEOPLE -- LET ME
21 INTERRUPT MYSELF.
22 WHAT'S ON THE WAGON AND WHAT'S OFF
23 THE WAGON, WHICH IS WHICH?
24 WHEN YOU ARE DRINKING WHAT ARE YOU,
25 ON THE WAGON OR OFF THE WAGON?
26 A. YOU ARE ON THE WAGON WHEN YOU ARE
27 NOT DRINKING, THEN YOU FALL OFF THE WAGON AND
28 DRINK.
3377
1 Q. FINE. SO WITH ALL OF THE A.A.
2 MEETINGS YOU HAVE BEEN TO, I GUESS SOME PEOPLE HAVE

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3 TO STAND UP THERE AND SAY THEY HAVE FALLEN OFF THE
4 WAGON?
5 A. OH, YEAH. PEOPLE HAVE DIED.
6 Q. AND YOU HAVE HEARD THAT MANY TIMES?
7 A. OH, YES.
8 Q. AND WHEN YOU ARE TELLING THE JURY
9 ABOUT QUITTING SMOKING FOR A YEAR AND ANALOGIZING
10 IT TO ALCOHOL AND AN ALCOHOLIC GOING INTO A LIQUOR
11 STORE TO BUY A BOTTLE, YOU ARE SAYING HE FELL OFF
12 THE TOBACCO WAGON?
13 MR. LEITER: OBJECTION, ARGUMENTATIVE AND
14 LEADING.
15 THE COURT: SUSTAINED.
16 I THINK THE JURY UNDERSTANDS.
17 MR. PIUZE: I WILL WITHDRAW THE QUESTION.
18 Q BY MR. PIUZE: I DO LITERALLY MEAN
19 THAT AFTER A YEAR, WHEN YOU WALK INTO A STORE TO
20 BUY A PACK OF CIGARETTES, YOU SAW YOURSELF AS SOME
21 ALCOHOLIC WHO FELL OFF THE WAGON TO GO GET A
22 BOTTLE?
23 MR. LEITER: SAME OBJECTION.
24 THE COURT: OVERRULED.
25 THE WITNESS: YES. I DESPISED GOING INTO
26 LIQUOR STORES FOR CIGARETTES.
27 MR. PIUZE: I AM DONE, THANK YOU.
28 THE COURT: MR. LEITER.
3378
1 MR. LEITER: THANK YOU, YOUR HONOR. JUST
2 A COUPLE QUESTIONS, MRS. BROKEN.
3
4 RECROSS-EXAMINATION
5
6 BY MR. LEITER:
7 Q. YOU WERE JUST ASKED BY YOUR
8 HUSBAND'S LAWYER ABOUT A COUPLE OF OCCASIONS WHEN
9 YOU QUIT SMOKING FOR A YEAR AT A TIME.
10 SEPARATE AND APART FROM WHEN YOU
11 QUIT SMOKING WHEN YOU WERE PREGNANT; RIGHT?
12 A. YES.
13 Q. ABOUT WHEN IN TIME DID THOSE TWO
14 QUITS TAKE PLACE?
15 A. DURING MY SOBRIETY, BETWEEN -- ONE
16 WAS -- THEY WERE BOTH IN THE '80'S.
17 Q. SO BOTH BEFORE DYLAN WAS BORN?
18 A. YES.
19 Q. BOTH IN THE '80'S, AND YOU SAID
20 THAT AT THAT POINT, AND CORRECT ME IF I WROTE THIS
21 DOWN INCORRECTLY, HEALTH MESSAGES ABOUT SMOKING HAD
22 INFILTRATED ALCOHOLICS ANONYMOUS; RIGHT?
23 A. YES.
24 Q. DID YOU EVER DISCUSS WITH YOUR
25 HUSBAND WHAT YOU LEARNED AT ALCOHOLICS' ANONYMOUS
26 ABOUT THE HEALTH RISKS OF SMOKING?
27 A. THERE'S A LOT OF WAYS MY HUSBAND
28 AND I ARE DIFFERENT. I WAS A PSYCH MAJOR AND HE
3379
1 THINKS IT IS PSYCHO BABBLE. AND WHEN I WENT TO
2 A.A. AND THEY SAID YOU CAN'T TAKE ANY MEDICINE WITH
3 ALCOHOL IN IT, AND I WENT THE WHOLISTIC ROUTE, HE
4 DIDN'T -- HE WASN'T OPEN TO ALTERNATIVE REMEDIES
5 FOR ANYTHING.
6 Q. I GUESS MY QUESTION WAS, DID YOU
7 DISCUSS WITH YOUR HUSBAND WHAT YOU HAD LEARNED AT

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ALCOHOLICS' ANONYMOUS ABOUT THE HEALTH RISKS OF SMOKING?
A. NO, BECAUSE HE WAS NOT OPEN TO HEARING IT.
Q. HOW LONG HAS YOUR HUSBAND BEEN IN ALCOHOLICS' ANONYMOUS?
A. 24 AND A HALF YEARS.
MR. LEITER: NOTHING FURTHER.
MR. PIUZE: AND THAT JUST PROMPTS ME FOR ONE LAST SUBJECT HERE.

FURTHER REDIRECT EXAMINATION

BY MR. PIUZE:
Q. WAS THERE A TIME AT ALCOHOLICS' ANONYMOUS WHERE THE TIME PERIOD, WHERE NOT ONLY DID TOBACCO GET TALKED ABOUT NEGATIVELY, BUT SO DID MANY OTHER SUBSTANCES HAVING TO DO WITH PURITY?
A. YES.
Q. TELL THE JURY.
A. SUGAR -- SUGAR, COFFEE, RED MEET,

3380

THE ENTIRE HEALTH CRAZE.
Q. SO FOR A PERIOD OF TIME, AT LEAST AT THE MEETINGS YOU WERE ATTENDING, PEOPLE AT THE MEETINGS WERE INTO SOME SORT OF A PURE HEALTH KIND OF LIFE?
A. YES. ALL OF A SUDDEN SOMEONE HAD LONG-TERM SOBRIETY BUT WHO WAS OVER-WEIGHT WOULD BE CRITICIZED BECAUSE, YOU KNOW, MAYBE THEY ARE EATING OR SOMETHING, FEELING.
Q. WAS IT AT THAT TIME THAT TOBACCO WAS DOWN?
A. YES.
Q. TALKED DOWN ONTO?
A. YES.
Q. OKAY, THANK YOU AGAIN.
A. OKAY.
MR. LEITER: NOTHING FURTHER, YOUR HONOR.
THE COURT: MA'AM, YOU MAY STEP DOWN.
THE WITNESS IS EXCUSED.

PETER FORMUZIS, PH.D.,
CALLED AS A WITNESS BY THE PLAINTIFF, WAS SWORN AND TESTIFIED AS FOLLOWS:
THE CLERK: YOU DO SOLEMNLY STATE THE TESTIMONY YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT, SHALL BE THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH, SO HELP YOU GOD.

3381

THE WITNESS: I DO.
THE CLERK: HAVE A SEAT, SIR.
SIR, IF YOU COULD STATE YOUR FIRST AND LAST NAME AND SPELL THEM FOR US, PLEASE.
THE WITNESS: MY NAME IS PETER FORMUZIS, P-E-T-E-R F-O-R-M-U-Z-I-S.

DIRECT EXAMINATION

BY MR. PIUZE:
Q. HI.
A. HELLO.

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13 Q. THE JURY HAS HEARD FROM A WHOLE
14 BUNCH OF DOCTORS IN HERE, MOST OF WHOM ARE MEDICAL
15 DOCTORS, SOME OF WHOM WERE PH.D.'S. WHERE DO YOU
16 FALL?
17 A. A PH.D.
18 Q. IN WHAT?
19 A. ECONOMICS.
20 Q. OKAY. IT'S MONDAY AFTERNOON, THAT
21 SOUNDS LIKE AN EXCITING TOPIC TO START WITH.
22 WHAT'S ECONOMICS?
23 A. WELL, ECONOMICS IS THE STUDY OF WHY
24 ECONOMIC LIFE WORKS OUT THE WAY IT DOES. SO
25 ECONOMISTS STUDY ALL THE THINGS THAT ALL OF US
26 EXPERIENCE EVERY DAY, THE INFLATION, THE CHANGE IN
27 OUR PRICES, OUR WAGES, THE EMPLOYMENT, THE INTEREST
28 RATES IN THE ECONOMY. ECONOMISTS STUDY THESE
3382
1 THINGS AND TRY TO FIGURE OUT WHY THESE THINGS OCCUR
2 AND THAT'S BASICALLY THE STUDY OF ECONOMICS, THE
3 STUDY OF OUR ECONOMIC LIFE.
4 Q. HOW LONG HAVE YOU BEEN AN
5 ECONOMIST?
6 A. I GOT MY PH.D. IN 1969 AND I HAVE
7 BEEN ACTIVELY EMPLOYED IN THE FIELD SINCE.
8 Q. TELL THE JURY YOUR EDUCATIONAL
9 BACKGROUND THAT ALLOWS YOU TO BECOME AN ECONOMIST,
10 PLEASE.
11 A. I HAVE A B.A. DEGREE IN ECONOMICS
12 FROM WASHINGTON STATE UNIVERSITY. I RECEIVED THAT
13 DEGREE IN 1963. I HAVE A PH.D. IN ECONOMICS FROM
14 MICHIGAN STATE UNIVERSITY. I RECEIVED THAT DEGREE
15 IN 1969.
16 THOSE WERE MY EDUCATIONAL DEGREES
17 AND SINCE THEN I HAVE WORKED FULL TIME 25 YEARS AS
18 A PROFESSOR OF ECONOMICS AND FOR SEVERAL YEARS I
19 HAVE WORKED WITH THE FEDERAL RESERVE SYSTEM AND THE
20 FEDERAL RESERVE BOARD IN WASHINGTON D.C.
21 Q. LET'S TALK ABOUT YOUR TEACHING
22 EXPERIENCE FIRST AND THEN WE WILL GO BACK TO THE
23 FEDERAL RESERVE.
24 TELL THE JURY ABOUT THE TEACHING
25 EXPERIENCE.
26 A. I TAUGHT, MY FIRST POSITION WAS AT
27 THE UNIVERSITY OF MONTANA. I TAUGHT THERE NINE
28 YEARS, BOTH GRADUATE AND UNDERGRADUATE CLASSES IN
3383
1 ECONOMICS.
2 AND IN 1976, AFTER NINE YEARS AT
3 THAT UNIVERSITY, I CAME HERE TO SOUTHERN CALIFORNIA
4 AND I BECAME A MEMBER OF THE DEPARTMENT OF
5 ECONOMICS AT CAL STATE FULLERTON AS PROFESSOR OF
6 ECONOMICS AND DIRECTOR OF THE GRADUATE PROGRAM IN
7 ECONOMICS, AND I ACTIVELY TAUGHT FULL TIME AND
8 DIRECTED MASTERS THESES AND SO FORTH FOR A PERIOD
9 OF 16 YEARS AT THAT UNIVERSITY.
10 Q. STILL CONNECTED WITH CAL STATE
11 FULLERTON?
12 A. I DIDN'T HEAR.
13 Q. STILL CONNECTED WITH THEM?
14 A. YES, I AM A PROFESSOR OF ECONOMICS
15 EMERITUS, WHICH MEANS I REMAIN A MEMBER OF THE
16 FACULTY, BUT I AM NOT ACTIVELY TEACHING.
17 Q. HOW LONG HAS IT BEEN SINCE YOU

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18 ACTIVELY TAUGHT ECONOMICS AT CAL STATE?
19 A. FULL TIME IN 1991, I DID TEACH FOR
20 ONE SEMESTER IN 1993 AFTER I BECAME PROFESSOR
21 EMERITUS.
22 Q. SO IT'S BEEN TEN YEARS?
23 A. ROUGHLY.
24 Q. WHAT HAVE YOU BEEN DOING FOR THE
25 LAST TEN YEARS?
26 A. I AM A PRINCIPLE AND PART OWNER OF
27 AN ECONOMIC CONSULTING FIRM. WE ARE LOCATED IN
28 SANTA MONICA AND OUR ENTIRE LINE OF WORK IS THE
3384
1 ESTIMATION AND MEASUREMENT OF ECONOMIC LOSSES IN
2 CIVIL LITIGATION MATTERS. IT CAN BE LOST EARNINGS
3 SITUATIONS. IT CAN BE LOSS OF GOODWILL OR PROFITS
4 IN CORPORATE SITUATIONS.
5 AND THAT'S WHAT WE DO AT OUR FIRM.
6 Q. SO IF YOU ARE INVOLVED WITH
7 FORENSIC ECONOMICS AND CIVIL LITIGATION --
8 A. YES.
9 Q. -- I GUESS YOU HAVE BEEN UP ON A
10 WITNESS STAND LIKE THAT A COUPLE TIMES?
11 A. MANY TIMES.
12 Q. ARE YOU COMFORTABLE?
13 A. YES, I AM.
14 Q. NERVOUS?
15 A. NO, I AM NOT.
16 Q. WHAT DID YOU DO AT THE FEDERAL
17 RESERVE BOARD?
18 A. THE TITLE OF MY POSITION WAS
19 VISITING PROFESSOR OF ECONOMICS BECAUSE I WAS
20 PULLED OUT OF MY UNIVERSITY AND I WENT BACK TO
21 WASHINGTON WHERE I WAS A MEMBER OF THE DIVISION OF
22 RESEARCH AND STATISTICS. AND AT THE DIVISION OF
23 RESEARCH AND STATISTICS I WAS ASSIGNED TWO KINDS OF
24 MAJOR RESEARCH TASKS. BUT OTHER THAN THAT, I
25 SIMPLY PARTICIPATED AS AN ECONOMIST IN THE DIVISION
26 OF RESEARCH AND STATISTICS AND ANALYZED DAY-TO-DAY
27 ECONOMIC PROBLEMS, AND FROM TIME TO TIME APPEARED
28 BEFORE THE FEDERAL RESERVE BOARD.
3385
1 Q. GIVE US JUST A LITTLE BIT ON THE
2 FEDERAL RESERVE BOARD, WHAT'S THAT, WHAT DO WE
3 MEAN?
4 A. THEY ARE THE ONES THAT CONTROL OUR
5 INTEREST RATES. THEY ARE THE ONES THAT MEET EVERY
6 MONTH AND BASICALLY PUSH OUR HOME MORTGAGE RATES UP
7 AND DOWN AND A VARIETY OF OTHER FACTORS.
8 IT'S THE ORGANIZATION IN WASHINGTON
9 D.C. WHICH CONTROLS MONETARY POLICY. AND THAT'S
10 ESSENTIALLY WHAT THE BOARD IS.
11 Q. SO LET'S TALK CIVIL LITIGATION.
12 I AM GOING TO WANT TO KNOW, AT THE
13 END OF WHEN I AM ASKING YOU THE QUESTIONS, WHAT THE
14 PRESENT CASH VALUE IS OF MR. BOEKEN'S LOSS OF
15 EARNINGS IN THE FUTURE. OKAY?
16 A. YES.
17 Q. TELL THE JURY WHAT PRESENT CASH
18 VALUE IS, PLEASE.
19 A. PRESENT CASH VALUE IS THE AMOUNT OF
20 MONEY THAT SOMEBODY WOULD NEEDED TO, INVESTED AT
21 INTEREST, THAT WILL REPLACE A FUTURE LOST EARNINGS
22 STREAM UP TO THE POINT IN TIME WHERE THAT

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23 INDIVIDUAL REASONABLY WOULD HAVE RETIRED.
24 Q. HAVE I ASKED YOU QUESTIONS IN FRONT
25 OF JURIES BEFORE?
26 A. YES, YOU HAVE.
27 Q. I GOT A COUPLE OF EXAMPLES THAT I
28 WOULD LIKE TO USE, IF I COULD.
3386
1 A. SURE.
2 Q. SOME OF THESE ARE DUSTY.
3 HAVE YOU EVER HEARD OF THE
4 CALIFORNIA STATE LOTTERY?
5 A. YES, I HAVE.
6 Q. HAVE YOU EVER HEARD OF A MILLION
7 DOLLAR WINNER?
8 A. YES.
9 Q. HAVE YOU HEARD THAT THE MILLION
10 DOLLAR WINNER GETS 50,000 BUCKS A YEAR FOR 20
11 YEARS?
12 A. YES.
13 Q. IS THE MILLION DOLLAR WINNER REALLY
14 A MILLION DOLLAR WINNER?
15 A. NO.
16 Q. WHAT KIND OF A WINNER IS THE
17 MILLION DOLLAR WINNER?
18 A. PRESENTLY, ABOUT $600,000 OR ABOUT,
19 IT'S ABOUT A 40 PERCENT DISCOUNT OFF THE MILLION
20 DOLLARS.
21 Q. IF THE MILLION DOLLAR WINNER IS
22 GETTING 50,000 BUCKS FOR 20 YEARS, THEN
23 MULTIPLICATION COMES OUT TO A MILLION BUCKS RIGHT
24 ON THE NOSE?
25 A. THAT IS RIGHT.
26 Q. WHY ISN'T IT A MILLION DOLLARS
27 REALLY, IN REAL MONEY?
28 A. BECAUSE USUALLY THE STATE OF
3387
1 CALIFORNIA, OR THE INDIVIDUAL, IF THEY HAD $600,000
2 COULD GENERATE THE MILLION DOLLARS. $600,000,
3 INVESTED OVER THE COURSE OF 20 YEARS, AND EACH YEAR
4 PULLING OUT OF THE INVESTMENT $50,000 A YEAR, THAT
5 INVESTMENT WILL THROW OFF ABOUT $400,000 IN
6 INTEREST.
7 THAT $400,000 IN INTEREST, TOGETHER
8 WITH THE $600,000 THAT WAS INVESTED, IS THE MILLION
9 DOLLARS.
10 SO THAT THE PRESENT VALUE OF THIS
11 MILLION DOLLAR TOTAL STREAM OF INCOME IS ONLY
12 $600,000 BECAUSE THAT'S THE AMOUNT OF MONEY THAT
13 ACTUALLY IT TAKES TODAY TO PRODUCE THAT SUM OF
14 MONEY, THE MILLION, OVER 20 YEARS.
15 Q. OKAY. HERE'S A DUSTIER EXAMPLE.
16 ABOUT 20 YEARS AGO, THERE WAS A
17 PRETTY GOOD BASKETBALL PLAYER HERE IN LOS ANGELES
18 WHO HAD WHAT, AT THAT TIME, WAS AN EARTH-SHATTERING
19 CONTRACT, 25 MILLION BUCKS FOR 25 YEARS. DO YOU
20 REMEMBER THAT?
21 A. YES.
22 Q. IF THAT PERSON GOT A MILLION
23 DOLLARS A YEAR FOR 25 YEARS, WAS THAT CONTRACT
24 REALLY WORTH 25 MILLION DOLLARS?
25 A. NO.
26 Q. WHY NOT?
27 A. IT WASN'T WORTH 25 MILLION DOLLARS

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28 BECAUSE THE TEAM DID NOT -- THE MANAGEMENT OF THE
3388
1 TEAM DID NOT HAVE TO SET ASIDE 25 MILLION DOLLARS
2 TO PAY THAT.
3 AT TODAY'S LEVEL OF INTEREST RATES,
4 IT WOULD TAKE ABOUT 12 MILLION DOLLARS. SO THEY
5 COULD TELL SOMEBODY, WE WILL GIVE YOU A MILLION
6 DOLLARS A YEAR FOR 25 YEARS.
7 BUT IF THEY TOOK ABOUT 12 MILLION
8 DOLLARS AND JUST TOOK IT DOWN AND PUT IT IN THE
9 BANK OR BOUGHT SOME GOVERNMENT T-NOTES WITH IT,
10 THAT 12 MILLION DOLLARS WOULD GENERATE ANOTHER 12
11 OR 13 MILLION DOLLARS IN INTEREST AND TOGETHER IT
12 WOULD COME TO THE 25 MILLION.
13 THE AMOUNT OF MONEY THAT IT WOULD
14 TAKE WOULD DEPEND UPON THE LEVEL OF INTEREST RATES.
15 AND AT THAT TIME, IT RATES WERE CONSIDERABLY HIGHER
16 THAN THEY ARE IN THE PRESENT DAY ECONOMY. AND SO
17 IN MY OPINION, THAT 25 MILLION DOLLAR CONTRACT WAS
18 NOT EVEN WORTH 12 MILLION. IT WAS PROBABLY WORTH
19 SOMETHING LESS THAN THAT, 10, 9, 8 MILLION DOLLARS.
20 Q. THANK YOU.
21 WHEN WE ARE TALKING ABOUT A FLAT
22 AMOUNT OF MONEY, WHETHER IT'S $50,000 A YEAR FROM
23 THE LOTTERY OR A MILLION BUCKS A YEAR FOR THAT
24 BASKETBALL PLAYER WHO IS WORTH THAT MUCH IN ONE
25 YEAR NOW, IF IT'S FLAT, THE SAME EVERY YEAR, AND
26 IT'S OVER A PERIOD OF TIME, IS THE PRESENT CASH
27 VALUE ALWAYS GOING TO BE A LOT LESS?
28 A. YES, IT WILL BE.
3389
1 Q. LET ME CHANGE THE -- MAKE IT A
2 LITTLE MORE COMPLICATED.
3 WHAT HAPPENS IF THE AMOUNT OF MONEY
4 THAT HAS TO BE PAID IN THE FUTURE DOESN'T STAY
5 FLAT, WHAT HAPPENS -- AND I DON'T WANT YOU TO
6 ANSWER THIS YET, I AM GETTING TO THE QUESTION.
7 WHAT HAPPENS IF, OVER TIME, THAT AMOUNT OF MONEY
8 GOES UP SLOWLY, SO, FOR INSTANCE, AND I DON'T WANT
9 TO USE MR. BOEKEN, BUT I AM GOING TO MAKE SOMEONE
10 UP NOW. OKAY?
11 A. OKAY.
12 Q. LET'S TAKE SOMEONE IN SOME UNION
13 SOMEWHERE WHO GETS -- MAYBE THE DELTA AIRLINE
14 PILOTS, MAYBE THAT'S A BAD EXAMPLE, BUT LET'S SAY
15 THAT SOMEONE IN THE UNION GETS A NEW CONTRACT AND I
16 AM GOING TO MAKE IT EASY, THEY ARE GETTING ONE
17 DOLLAR AN HOUR.
18 A. OKAY.
19 Q. THEY GOT REALLY BAD NEGOTIATORS.
20 AND OVER A PERIOD OF TIME, THEIR WAGES ARE GOING TO
21 GO UP PER THE CONTRACT. SO OVER SEVERAL YEARS THE
22 WAGES ARE GOING UP, I DON'T KNOW, THREE, FOUR, FIVE
23 PERCENT A YEAR, WHATEVER, SOMETHING LIKE THAT.
24 NOW, IF YOU ARE FINDING THE PRESENT
25 CASH VALUE OF WAGES THAT GO UP IN THE FUTURE, AS
26 OPPOSED TO A FLAT STREAM, DOES THE EQUATION BECOME
27 A LITTLE MERE COMPLICATED?
28 A. YES, IT DOES.
3390
1 Q. WHY?
2 A. IT BECOMES MORE COMPLICATED BECAUSE
3 EACH PAYMENT IS GOING TO BE A HIGHER NUMBER AND

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4 THAT HAS TO BE FIGURED IN.
5 SO, FOR EXAMPLE, THAT -- LET'S GO
6 BACK TO THE CALIFORNIA LOTTERY. LET'S JUST SUPPOSE
7 IT WAS CONSTRUCTED DIFFERENTLY SO THAT IN YEAR ONE
8 SOMEBODY GOT $50,000, IN YEAR TWO, LET'S SUPPOSE IT
9 IS 5 PERCENT HIGHER THAN THAT AND SOMEBODY GOT
10 $52,500, AND THEN THE NEXT YEAR, 5 PERCENT HIGHER
11 THAN THAT AND SO ON DOWN THE LINE.
12 IN THAT CASE, IN ORDER TO FIND THAT
13 PRESENT VALUE, ONE WOULD HAVE TO SET OUT THE 20
14 PAYMENTS, EACH ONE, 5 PERCENT HIGHER THAN THE ONE
15 THAT PRECEDED IT AND THEN FIGURE THE PRESENT VALUE
16 ON THE BASIS OF THAT STREAM.
17 SO IT'S A MORE COMPLICATED PROBLEM.
18 IT'S BASICALLY A SIMPLE PROBLEM TO SOLVE, BUT
19 GENERALLY IT TAKES MORE ARITHMETIC.
20 Q. AND THE POINT I WANT TO GET TO, AND
21 I WANT TO ASK FOR A BREAK, PROBABLY, AFTER THIS, IF
22 YOU ARE JUST DEALING WITH A FLAT NUMBER, LIKE THE
23 $50,000 A YEAR FROM THE CALIFORNIA LOTTERY AND A
24 MILLION BUCKS A YEAR FROM 20 BUCKS A YEAR FROM THE
25 BASKETBALL PLAYER, WE CAN SEE FROM WHAT YOU HAVE
26 ALREADY SAID, OVER A LONG RUN LIKE THAT, PRESENT
27 CASH VALUE'S HALF, 60 PERCENT, SOMETHING LIKE THAT.
28 WHEN THE CONCEPT GETS CHANGED AND THERE'S A SLIGHT
3391
1 RAISE, BECAUSE OF A UNION CONTRACTS OR SOMETHING,
2 OVER A PERIOD OF TIME, DOES THAT MEAN THE 50 TO 60
3 PERCENT IS STILL GOING TO BE ABOUT RIGHT OR IT IS
4 HIGHER OR LOWER?
5 A. THE 50 OR 60 PERCENT IS NOT RIGHT.
6 THE AMOUNT WILL BE HIGHER. AND IT WILL TEND TO
7 CONVERGE ON WHAT THE FULL VALUE, THE TOTAL NUMBER
8 OF DOLLARS OF THAT STREAM IS. IT WILL TEND TO
9 CONVERGE ON IT.
10 Q. OKAY. I WAS WITH YOU HALFWAY AND I
11 LOST YOU ON THE CONVERSION.
12 A. OKAY. LET'S TAKE THE -- GO BACK TO
13 THE $50,000 A YEAR LOTTERY.
14 WHEN I SAID ITS PRESENT VALUE IS
15 ABOUT $600,000 FOR THAT, IN MY THINKING ON THAT
16 PROCESS, I WAS USING AN INTEREST RATE OF ABOUT 5
17 PERCENT. THAT HAPPENS TO BE ALMOST EXACTLY THE
18 INTEREST RATE TODAY ON UNITED STATES GOVERNMENT
19 BONDS, 10, 15, 20, 20 YEARS.
20 SUPPOSE THAT THE LOTTERY GAVE THE
21 WINNER A FIVE PERCENT INCREASE EACH YEAR, IN OTHER
22 WORDS, THIS YEAR IT'S $50,000, NEXT YEAR IT'S
23 52,500. IN THAT CASE, YOU HAVE A FIVE PERCENT
24 ANNUAL GROWTH AND YOU HAVE A FIVE PERCENT INTEREST
25 RATE THAT YOU CAN INVEST MONEY. THE FIVE AND THE
26 FIVE ARE PERFECTLY OFFSETTING. AND WHAT ECONOMISTS
27 CALL THE NET DISCOUNT RATE OF ZERO IN THAT CASE AND
28 THE PRESENT VALUE OF THAT LOTTERY WINNER IS A
3392
1 MILLION DOLLARS. IT'S A MILLION DOLLARS NOW.
2 IT HAS RISEN UP TO THAT MILLION
3 DOLLAR FIGURE.
4 Q. IF THE PAYOFF GOES UP 5 PERCENT A
5 YEAR, AND THE INTEREST YOU CAN EARN IN THE BACK IS
6 5 PERCENT A YEAR, IT'S A PUSH?
7 A. IT'S A PUSH, RIGHT. YOU JUST TAKE
8 THE AMOUNT OF THE PAY OUT TODAY AND JUST MULTIPLY

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9 THAT BY THE NUMBER OF YEARS OF THE PAY OUT AND YOU
10 WILL END UP, MATHEMATICALLY, WITH THE PRESENT
11 VALUE.
12 Q. AND YOU JUST MULTIPLY IT?
13 A. IN THAT PARTICULAR CASE, YOU WOULD
14 JUST MULTIPLY IT BY THE 20 YEARS, 50,000 TIMES 20
15 YEARS, AND THAT WILL GIVE YOU THE PRESENT VALUE.
16 Q. IF THE LOTTERY WENT UP 5 PERCENT A
17 YEAR, BUT YOU COULD GET 6 PERCENT A YEAR ON THE
18 BANK, THEN WHAT?
19 A. WELL, IN THAT CASE, THE PRESENT
20 VALUE WILL BE ABOUT 5 PERCENT LESS. SO IT WOULD
21 END UP BEING ABOUT $950,000.
22 YOU WOULD BE VERY CLOSE TO THE
23 MILLION BECAUSE THE TWO PERCENTAGES ARE VERY CLOSE
24 TOGETHER.
25 Q. SO THIS IS THE LOTTERY EXAMPLE NOW?
26 A. RIGHT. IN THE LOTTERY EXAMPLE, IF
27 IT WENT UP 5 PERCENT BUT YOU COULD PUT YOUR MONEY
28 IN THE BANK AT 6 PERCENT, THE EFFECT OF DISCOUNT IS
3393
1 ONLY ONE PERCENT, THE DIFFERENCE BETWEEN THE 5 AND
2 THE 6.
3 AND THAT THAT WOULD END UP TAKING,
4 EXCUSE ME, TAKE OFF ABOUT TEN PERCENT, IT WOULD
5 MAKE IT ABOUT $900,000.
6 Q. LET'S FLIP IT THE OTHER WAY, AND
7 THIS WILL BE THE LAST SERIES OF QUESTIONS HERE.
8 WHAT IF THE LOTTERY PAY OFF WENT UP
9 5 PERCENT A YEAR, YOU PUT YOUR MONEY IN THE BANK
10 YOU ONLY GOT FOUR PERCENT A YEAR, THEN WHAT
11 HAPPENS?
12 A. IN THAT CASE, THE PRESENT CASH
13 VALUE IS BIGGER THAN A MILLION DOLLARS, BECAUSE YOU
14 HAVE SUCH A GOOD INCREASE IN THE ANNUAL PAYMENT
15 RELATIVE TO WHAT YOU CAN MAKE IN THE BANK. SO
16 PRESENT VALUE WOULD BE ABOUT TEN PERCENT HIGHER, IT
17 BEING ABOUT, IT WOULD BE ABOUT A MILLION, ONE.
18 Q. WHEN WE COME BACK AND DISCUSS MR.
19 BOEKEN'S SPECIFICS, WE WILL -- WILL IT BE RIGHT FOR
20 US TO KEEP IN MIND HOW MUCH WAGES RISE OVER TIME
21 VERSUS HOW MUCH INTEREST YOU CAN GET?
22 A. YES.
23 Q. ARE THOSE THE TWO THINGS THAT WE
24 ARE GOING TO KEEP IN MIND?
25 A. YES.
26 MR. PIUZE: OKAY, YOUR HONOR.
27 THE COURT: VERY WELL, LADIES AND
28 GENTLEMEN. WE WILL TAKE A BREAK. I WILL SEE YOU
3394
1 ALL AT FIVE MINUTES PAST 3:00. DON'T DISCUSS THE
2 CASE WITH ANYONE.
3 COUNSEL, IF YOU WOULD ALL STAY WITH
4 ME.
5
6 (AT THIS TIME, A RECESS
7 WAS TAKEN.)
8
9 (THE FOLLOWING PROCEEDINGS
10 WERE HELD IN OPEN COURT IN
11 THE PRESENCE OF THE JURY.)
12
13 THE COURT: SIR, YOU UNDERSTAND YOU ARE

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14 STILL UNDER OATH.
15 THE WITNESS: I DO.
16 THE COURT: MR. PIUZE.
17 MR. PIUZE: THANK YOU.
18
19 DIRECT EXAMINATION (RESUMED)
20
21 BY MR. PIUZE:
22 Q. RICHARD BOEKEN, WHAT DO YOU KNOW
23 ABOUT RICHARD BOEKEN?
24 A. HE'S PRESENTLY 56 YEARS OF AGE. HE
25 WAS IN THE OIL AND GAS BUSINESS. HIS EARNINGS
26 AVERAGING FROM 1988 THROUGH 1998 AVERAGED ABOUT
27 $187,000 A YEAR.
28 HE INTENDED TO WORK TO EITHER AGE
3395
1 66 OR 67, AND THAT HE WILL NOT WORK AGAIN, WILL NOT
2 LIVE VERY LONG.
3 Q. HOW DO YOU KNOW THESE THINGS?
4 A. YOU INFORMED ME OF ALL THESE
5 MATTERS AND SENT ME VARIOUS DOCUMENTS TO ASCERTAIN
6 HIS INCOME.
7 Q. BEFORE YOU COULD GO ANY FURTHER ON
8 RICHARD BOEKEN, SHOULD IT BE MADE CLEAR THAT YOU
9 DON'T KNOW HIM?
10 A. I DO NOT.
11 Q. ANY CALCULATIONS YOU HAVE DONE ARE
12 BASED UPON DOCUMENTS I HAVE SENT YOU?
13 A. YES.
14 Q. AND INFORMATION I HAVE PROVIDED YOU
15 ABOUT HIS AGE, DATE OF BIRTH, STUFF LIKE THAT?
16 A. THAT IS CORRECT.
17 Q. WELL, DO YOU KNOW WHAT A
18 HYPOTHETICAL QUESTION IS?
19 A. YES, I DO.
20 Q. WHAT?
21 A. WELL, A HYPOTHETICAL QUESTION IS
22 THAT YOU WILL ASK ME TO ASSUME CERTAIN FACTORS, AND
23 BASED UPON THOSE FACTORS, I WILL RENDER AN OPINION,
24 ASSUMING THAT THOSE FACTORS YOU HAVE ASKED ME TO
25 ASSUME ARE TRUE.
26 Q. RIGHT. SO BEFORE WE GET INTO THE
27 MEAT OF IT, THERE ARE A COUPLE THINGS I WANT YOU TO
28 ASSUME AS TRUE.
3396
1 RICHARD BOEKEN WAS BORN ON AUGUST
2 15TH, 1944. SO AT LEAST FOR THE NEXT COUPLE MONTHS
3 THAT MAKES HIM 56 YEARS OLD?
4 A. THAT IS RIGHT.
5 Q. RICHARD BOEKEN WAS PLANNING ON
6 WORKING UNTIL AGE 66 OR 67, ASSUME THAT TO BE TRUE.
7 A. YES.
8 Q. OKAY.
9 AND THEN FOR RIGHT NOW, OTHER THAN
10 TELLING YOU WHEN HE WAS BORN AND HOW LONG HE
11 INTENDED TO WORK, AND I AM GETTING THAT OUT OF A
12 VIDEO TAPED DEPOSITION THE JURY HAS SEEN, I DON'T
13 WANT YOU TO ASSUME ANYTHING ELSE, JUST THOSE
14 THINGS, DID MY FIRM SEND YOU DOCUMENTS HAVING TO DO
15 WITH MR. BOEKEN'S EARNINGS?
16 A. YES.
17 Q. WHAT?
18 A. I HAVE TAX RETURN DATA FOR THE

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19 YEARS 1988, 1992, '93, '94, '95, '96, '97, AND THEN
20 YOU INFORMED ME OF A FIGURE FOR 1998 AS WELL AS TO
21 FIGURES FOR 1990 AND 1991.
22 Q. LET'S STICK WITH THE FIGURES, AT
23 LEAST FOR OPENERS, THAT COME RIGHT OFF OF INCOME
24 TAX RETURNS. OKAY?
25 A. OKAY.
26 Q. OKAY, ACCORDING TO TAX RETURNS THAT
27 WERE PROVIDED TO YOU, DID YOU GET THE WHOLE HUGE
28 TAX RUN OR JUST THE FIRST COUPLE PAGES OF TAX
3397
1 RETURN?
2 A. FIRST COUPLE OF PAGES.
3 Q. CAN EVERYBODY SEE THAT? 1988, HOW
4 MUCH?
5 A. $82,322.
6 Q. NOW, WHAT'S THE NEXT YEAR FOR WHICH
7 YOU HAVE GOT A TAX RETURN?
8 A. 1992.
9 Q. DO YOU HAVE ANY INFORMATION AT ALL
10 FOR '89?
11 A. NO.
12 Q. DO YOU HAVE SOME INFORMATION FOR
13 '90 AND '91, NOT BASED ON TAX RETURNS?
14 A. YES, I DO.
15 Q. I AM GOING TO COME BACK AND FILL IN
16 THE BLANKS. LET'S JUST GO WITH STRAIGHT TAX
17 RETURNS; OKAY?
18 A. OKAY.
19 Q. 1992. HOW MUCH?
20 A. $234,389.
21 Q. 1993?
22 A. 1993 IS $237,135.
23 Q. 1994 TAX RETURN?
24 A. $227,178.
25 Q. 227,178?
26 A. YES.
27 Q. IN 1995, WITHOUT MENTIONING
28 FIGURES, WAS THERE A TAX RETURN AND THEN AN AMENDED
3398
1 TAX RETURN?
2 A. YES.
3 Q. I WANT TO GO WITH THE AMENDED, AND
4 THE AMENDED WAS THE LATER ONE?
5 A. YES.
6 Q. I WANT TO GO WITH THE AMENDED TAX
7 RETURN. HOW MUCH?
8 A. $250,000.
9 Q. AND THAT AMENDMENT WAS FROM A
10 HIGHER NUMBER OF INCOME?
11 A. YES, SIR.
12 Q. SO LET ME JUST DO THAT.
13 IN 1995 SOMETHING WAS FILED, WHICH
14 WAS LARGER THAN THIS 250 NUMBER, BUT THE LAST
15 AMENDED RETURN WAS $250,000?
16 A. YES.
17 Q. OKAY. 1996?
18 A. $100,000.
19 Q. 1997?
20 A. $205,271.
21 Q. 1998?
22 A. I DO NOT HAVE A TAX RETURN FOR THAT
23 YEAR IN MY SESSION.

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24 Q. YOU DON'T?
25 A. I DON'T HAVE A RETURN FOR THAT
26 YEAR.
27 Q. I JUMPED THE GUN ON THIS. HANG ON.
28 NOW, AS TO '89, I PUT NO
3399
1 INFORMATION OF ANY KIND, AND IS THAT WHAT YOU ARE
2 LEFT WITH, NO INFORMATION OF ANY KIND?
3 A. YES.
4 Q. LET ME GET A DIFFERENT COLOR PEN TO
5 WRITE WITH.
6 FOR 1990, TELL THE JURY WHAT
7 INFORMATION YOU HAVE AND THE SOURCE OF YOUR
8 INFORMATION?
9 A. THE INFORMATION IS $77,000. IT WAS
10 INCOME THAT WAS REPORTED PER A BANKRUPTCY PETITION.
11 Q. 1991?
12 A. $75,000 AND THAT WAS INCOME
13 REPORTED ON A BANKRUPTCY PETITION.
14 Q. 1998?
15 A. $167,000, YOU HAVE PROVIDED ME THIS
16 FIGURE.
17 Q. 167?
18 A. YES.
19 Q. HAVE YOU -- I DON'T WANT ANYTHING
20 ABOUT CONTENT RIGHT NOW, BUT HAVE YOU HAD ANY
21 CONVERSATIONS WITH OR COMMUNICATIONS, LET'S START
22 WITH COMMUNICATIONS, WITH BERNARD LEWAK?
23 A. NO.
24 Q. SO HERE'S WHAT I WANT YOU TO DO,
25 USING ALL OF THE BLACK NUMBERS THERE WHICH COME OFF
26 OF TAX RETURNS, AND USING THE GREEN NUMBERS WHICH
27 THE TOP TWO OF WHICH COME OFF OF A BANKRUPTCY
28 PETITION AND THE BOTTOM ONE, WHICH YOU HAVE TO
3400
1 TRUST ME ON AT LEAST FOR OVERNIGHT, WHAT, IF
2 ANYTHING, CAN YOU DO WITH THOSE NUMBERS IN ORDER TO
3 FIGURE OUT FOR A REASONABLE ECONOMIC PLAUSIBILITY,
4 WHAT MR. BOEKEN'S FUTURE WAGE LOSS WILL BE?
5 A. THE FIRST THING THAT I HAVE TO DO
6 TO THOSE IS TO EXPRESS THEM IN TERMS OF WHAT WE
7 CALL 1999 DOLLARS. SO, IN OTHER WORDS, LET'S LOOK
8 AT THE $82,322 MR. BOEKEN EARNED IN THE YEAR 1988.
9 IN THE YEAR 1988, JUST THE AVERAGE
10 LEVEL OF PRICES AND WAGES IN THE UNITED STATES WERE
11 ABOUT A THIRD LESS THAN THEY ARE TODAY. WAGES
12 GENERALLY FOR ALL TYPES OF WORK ARE ABOUT A THIRD
13 MORE, PRICES ARE ABOUT A THIRD MORE.
14 SO THAT WHAT THE ECONOMIST DOES IS
15 TO LOOK BACK AT THE EARLIER YEARS AND EXPRESS THEM
16 IN TERMS OF THE 1999 PRICE LEVEL. AND IF THAT'S
17 DONE, THE $82,322 THAT HE MADE IN THE YEAR 1988, AT
18 TODAY'S PRICE LEVEL, WITH TRANSLATE TO ABOUT
19 115,933.
20 Q. STOP FOR A SECOND.
21 I AM GOING TO WIND UP ASKING YOU TO
22 COME DOWN HERE AND ASKING YOU TO PUT YOUR OWN
23 HANDWRITING ON THESE THINGS THAT ARE MODIFIED FROM
24 THE HARD TAX RETURNS.
25 A. YES.
26 Q. WE HAVE ALL HEARD, OBVIOUSLY, WE
27 HAVE ALL HEARD OF INFLATION.
28 A. YES.

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3401
1 Q. AND WE HAVE AN IDEA ABOUT
2 INFLATION. HOW DOES INFLATION FACTOR INTO WAGES?
3 A. IT FACTORS INTO WAGES BECAUSE IT IS
4 ONE OF THE FACTORS WHICH MAKES WAGES RISE. WAGES
5 RISE PARTLY BECAUSE PRODUCTS SELL FOR A HIGHER
6 PRICE. VERY SIMPLEST EXAMPLE, AND IT WON'T APPLY
7 TO MR. BOEKEN'S TRADE, BUT SOMEBODY SELLS APPLES,
8 THEY SOLD AN APPLE IN THE YEAR 1988, WHEN THEY SOLD
9 THAT APPLE, THEY SOLD IT, LET'S SUPPOSE, FOR A
10 DIME, AND THEY RECEIVE A DIME. THEIR EARNINGS WERE
11 A DIME.
12 IF THEY SOLD THAT APPLE TODAY, THEY
13 WOULD SELL IT FOR A HIGHER NUMBER, LET'S SUPPOSE
14 THEY WOULD SELL IT FOR 14 CENTS OR 15 CENTS, THEY
15 THEN WOULD EARN 14 OR 15 CENTS FOR SELLING THE SAME
16 APPLE.
17 AND AS INFLATION PROCEEDS, WAGES,
18 THE WAGES PEOPLE GET ARE HIGHER. AND THAT'S
19 BECAUSE THAT FOR EVERY DOLLAR SPENT IT'S A DOLLAR
20 EARNED.
21 SO WHEN PEOPLE ARE SPENDING, HAVING
22 TO SPEND MORE DOLLARS FOR PRODUCTS BECAUSE THINGS
23 SELL AT A HIGHER PRICE, THERE IS SOMEBODY ON THE
24 OTHER SIDE OF THAT COUNTER WHO'S RECEIVING THOSE
25 DOLLARS. FOR EVERY DOLLAR SPENT THERE'S A DOLLAR
26 EARNED.
27 AND THE BULK OF THOSE DOLLARS ARE
28 GOING TO GO TO SOMEBODY'S WAGES, MAYBE THE STORE
3402
1 CLERK'S WAGES, MAYBE THE OWNER'S WAGES, MAYBE THE
2 TRUCK DRIVER WHO DELIVERS THE GOODS TO THE STORE TO
3 BE SOLD. BUT FOR EVERY DOLLAR SPENT THERE'S A
4 DOLLAR EARNED AND THE INFLATION MAKES WAGES RISE.
5 WAGES CAN RISE FOR OTHER FACTORS AS WELL.
6 Q. SO HOPEFULLY MOST OF US ARE MAKING
7 MORE NOW THAN 1988?
8 A. THAN 1988.
9 Q. NOW, AS WE GO DOWN THIS LINE HERE,
10 SAME EXPLANATION APPLIES TO EACH?
11 A. YES. IT APPLIES TO EACH, BUT THE
12 EFFECT IS SMALLER. BECAUSE, LET'S JUST TAKE, FOR
13 EXAMPLE, IF WE ARE PUTTING THINGS IN THE $167,000
14 THAT WE HAVE FOR 1998, THAT'S ALMOST A CURRENT
15 DOLLAR. IT'S VERY LITTLE DIFFERENCE BETWEEN A 1998
16 DOLLAR AND A 1999 DOLLAR.
17 SO THE $167,000 IS ABOUT WHAT IT
18 WOULD BE AT THE CURRENT LEVEL OF PRICES. SO THE
19 EFFECT BECOMES SMALLER AS WE MOVE CLOSER TO CURRENT
20 TIME.
21 Q. THE LONGER THE SPREAD, THE MORE THE
22 INFLATION, THE MORE YOU GOT TO BUMP THE NUMBER UP
23 TO GET INTO TO TODAY'S MARKET?
24 A. YES, SIR.
25 Q. THE CLOSER WE ARE TO TODAY, THE
26 LESS INFLATION, THE LESS YOU HAVE TO BUMP THE
27 NUMBER UP TO GET IT TO TODAY'S MARKET?
28 A. YES.
3403
1 Q. HAVING SAID THAT THEN, I'D
2 APPRECIATE IT IF YOU WOULD COME DOWN, JUST PUT THE
3 CURRENT DOLLAR VALUE RIGHT OFF HERE WITH SOME SORT
4 OF A LITTLE HEADING SO WE WILL REMEMBER IT LATER.

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5 A. THE 1988, THE INFLATION ADJUSTED
6 FIGURE IS $115,933.
7 FOR 1990 FIGURE IS $98,150.
8 THE 1991 FIGURE IS $91,740.
9 THE 1992 FIGURE IS $278,326.
10 THE 1993 FIGURE IS $273,403.
11 THE 1994 FIGURE IS $255,384.
12 THE 1996 FIGURE IS $273,294.
13 Q. WHAT YEAR WAS THAT YOU JUST SAID?
14 A. 1995.
15 Q. OKAY.
16 A. THE 1996 FIGURE IS $106,182.
17 THE 1997 FIGURE IS $213,073.
18 AND THE 1998 FIGURE IS $170,688.
19 Q. NOW, TELL THE JURY WHAT YOUR
20 HEADING UP AT THE TOP OF THE PAGE IS.
21 A. THESE ARE THE EARNINGS IN 1999
22 PRICE LEVEL DOLLARS.
23 Q. SEEING THAT WE ARE HERE IN 2001,
24 HOW DID 1999 GET UP THERE?
25 A. 1999 IS THE LAST YEAR, BASICALLY,
26 THE FIRST YEAR THAT THERE WOULD BE ANY LOSSES. SO
27 I AM STARTING THE LOSS CALCULATION AS OF THE
28 DOLLARS OF THE YEAR 1999.
3404
1 Q. OKAY.
2 NOW, I AM GOING TO COME BACK TO
3 THIS LATER BUT I WILL FORCE IT OUT OF YOU NOW. DID
4 I GIVE YOU ANY KIND OF AN AMOUNT FOR 1999?
5 A. YES, YOU DID.
6 Q. WHAT WAS THAT?
7 A. APPROXIMATELY $500,000.
8 Q. AND DID YOU CHOOSE NOT TO PUT THAT
9 UP ON THIS CALCULATION?
10 A. YES.
11 Q. WHY NOT?
12 A. I DIDN'T PUT IT UP BECAUSE, TO MY
13 KNOWLEDGE, WE -- THE TAX RETURN HAS NOT BEEN
14 PREPARED FOR THAT YEAR. AND SO I JUST SIMPLY CHOSE
15 TO LEAVE IT OFF.
16 SECONDLY, THAT GIVEN -- IF IT IS
17 APPROXIMATELY $500,000, OR ANYTHING MATERIALLY
18 ABOVE THE AVERAGE OF THE FIGURES WE HAVE HERE, IT
19 WOULD TEND TO RAISE THE ECONOMIC LOSS BUT NOT BY A
20 LARGE AMOUNT BECAUSE WE ARE AVERAGING MANY YEARS'
21 WORTH OF PAST EARNINGS. SO FOR THOSE TWO REASONS,
22 I HAVE NOT.
23 Q. SO WHETHER MR. BOEKEN, HE MADE AN
24 ESTIMATE ON THE VIDEO TAPE THAT HE HAD, FOR 1999,
25 WHETHER THAT HAPPENED OR NOT, FOR THE PURPOSE OF
26 THESE CALCULATIONS, YOU ARE GOING TO FORGET IT?
27 A. YES.
28 Q. IF YOU TOOK IT INTO ACCOUNT, YOUR
3405
1 ULTIMATE NUMBER WOULD BE HIGHER, LOWER OR THE SAME?
2 A. THE ULTIMATE NUMBER WOULD BE HIGHER
3 BY ABOUT $100,000.
4 Q. ALL RIGHT. NOW, LET'S LOOK AT
5 SOMETHING ELSE HERE.
6 WE HAVE HEARD THROUGH VIDEO TAPED
7 DEPOSITION THAT MR. BOEKEN HAD STARTED UP A
8 BUSINESS OF HIS OWN IN THE LATE '80'S.
9 AND I WILL JUST SHOW YOU THAT SOME

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10 OF THE NUMBERS WE ARE LOOKING AT HERE IN THE LATE
11 '80'S, EARLY '90'S, '82, '77, '75, ARE A HECK OF A
12 LOT DIFFERENT THAN THE NUMBERS THAT WE SEE RUNNING
13 THROUGH THE '90'S.
14 WOULD YOU AGREE TO THAT?
15 A. YES, I WILL.
16 Q. I DON'T WANT YOU TO DO THIS, BUT IF
17 I HAD SAID TO YOU, YOU KNOW WHAT, HE WAS LEARNING
18 THE ROPES, HE WAS STARTING A NEW BUSINESS, HIS
19 ORIGINAL NUMBERS WERE LOWER, LET'S NOT TAKE THEM
20 INTO ACCOUNT, LET'S ONLY TAKE INTO ACCOUNT ONCE HE
21 GETS ROLLING HERE, WOULD THE ULTIMATE LOSSES, AS
22 YOU FIGURE THEM, BE HIGHER, LOWER OR THE SAME?
23 A. THEY WOULD BE HIGHER.
24 Q. BY TAKING THE ENTIRE TEN-YEAR RUN,
25 INCLUDING THE KIND OF MONEY THAT MR. BOEKEN WAS
26 MAKING STARTING UP IN THE '50'S AND TAKING THE
27 ENTIRE RUN ALL THE WAY DOWN TO HERE, GIVE YOU
28 ANOTHER CHOICE, YOU FIGURE THIS IS A RELATIVELY
3406
1 CONSERVATIVE WAY OF DOING IT, OR SORT OF BENDING IT
2 IN MR. BOEKEN'S DIRECTION TO MAKE THE NUMBER
3 BIGGER?
4 A. NO, I THINK IT'S A RELATIVELY
5 CONSERVATIVE WAY.
6 Q. WHY?
7 A. BECAUSE I AM TAKING INTO ACCOUNT
8 THESE EARLY YEARS WHERE HE MADE, GENERALLY,
9 CONSIDERABLY LESS THAT HE MADE IN ALL OTHER YEARS,
10 EXCEPT FOR, PERHAPS, AROUND 1996.
11 SO BY AVERAGING THESE EARLIER YEARS
12 IN, AND THEY GIVE ESSENTIALLY THE SAME DEGREE OF
13 IMPORTANCE AS SOME OF THE, IN THE LATER YEARS, IT'S
14 AS IF WE ARE ASSUMING HERE THAT THERE WAS NO
15 LEARNING CURVE FOR THIS BUSINESS, WHEN IT STARTED
16 GOING, HE STARTED WITH FULL KNOWLEDGE AND ABILITY
17 AND INFORMATION AND SKILL AND SO FORTH IN THE
18 BUSINESS, AND GENERALLY THAT IS NOT TRUE, USUALLY
19 IT TAKES A WHILE FOR SOMEBODY TO GET A HANDLE ON
20 ANYTHING.
21 AND SO I THINK IT'S A CONSERVATIVE
22 WAY OF LOOKING AT IT.
23 BUT I THINK IT'S ALSO A FAIR WAY
24 BECAUSE, OBVIOUSLY, THE INCOME FLUCTUATES. THIS IS
25 THE KIND OF A JOB, AN INCOME POSITION WHERE INCOME
26 DOES FLUCTUATE. IT'S NOT LIKE BEING A SALARIED JOB
27 LIKE A SCHOOL TEACHER. SO YOU HAVE TO CONSIDER THE
28 FACT THAT SOMETIMES HE CAN MAKE SIGNIFICANT AMOUNTS
3407
1 OF MONEY AND ONCE IN AWHILE, HE COULD HAVE GONE OFF
2 IN SOME DIRECTION AND THE INCOME COULD HAVE BEEN
3 SHARPLY LOWER, FOR EXAMPLE, AS IT WAS IN 1996, BUT
4 THEN, ESSENTIALLY, DOUBLED WHEN IT GOT TO 1997.
5 SO WE TAKE INTO ACCOUNT THE HIGHS
6 AND LOWS FOR ALL THE YEARS.
7 Q. SO THAT'S WHAT I WANT, AVERAGE THE
8 WHOLE THING OUT AND IN 1999 DOLLARS, WHAT DOES THAT
9 ALL COME OUT TO, ON THE AVERAGE, PLEASE.
10 A. THE AVERAGE IS $187,617.
11 Q. THANKS.
12 WHY DON'T YOU TAKE YOUR SEAT,
13 PLEASE.
14 NOW, BEFORE WE GO FURTHER, I WANT

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TO DIGRESS BRIEFLY.
REMEMBER, BEFORE YOU WERE TALKING
ABOUT JUST THE GENERAL CONCEPT OF INFLATION?
A. YES.
Q. PRICES GENERALLY GO UP OVER A
PERIOD OF TIME?
A. YES, THEY DO.
Q. DO PRICES -- THIS IS JUST
GENERALLY, BUT GENERALLY, DO PRICES GO UP SLOWLY,
RAPIDLY, NEITHER OF THE ABOVE, ALL OF THE ABOVE?
A. IN THIS COUNTRY, THEY GO UP
GRADUALLY, MOST OF THE TIME.
WE HAVE HAD A FEW EXPERIENCES IN
THIS COUNTRY OF SIGNIFICANT INFLATION. WE HAD ONE
3408
IN THE LATE '70'S AND VERY EARLY '80'S.
WE HAD A SPURT OF INFLATION AFTER
THE SECOND WORLD WAR.
BUT GENERALLY, PRICES HAVE
INCREASED GRADUALLY IN THIS COUNTRY COMPARED TO
INTERNATIONAL EXPERIENCE OF OTHER COUNTRIES AROUND
THE WORLD, AND OVERALL, OUR INFLATION HAS TENDED TO
AVERAGE IN THE RANGE OF THREE TO FOUR PERCENT PER
YEAR. AND THAT'S ABOUT THREE PERCENT, THAT'S WHAT
IT'S BEEN IN THE LAST FEW YEARS IN THIS COUNTRY.
Q. HAVE YOU EVER HEARD OF ELECTRICITY?
A. I HAVE HEARD OF IT.
Q. DO YOU HAVE LIGHTS IN YOUR OFFICE?
A. I HAVE LIGHTS IN MY OFFICE.
Q. IN YOUR HOUSE?
A. IN MY HOUSE.
Q. IS THAT SUPPLIED BY S.C.E?
A. YES, IT IS.
Q. DO YOU NOTICE YOUR BILLS HAVE BEEN
GOING UP?
A. YEAH, THAT'S FOR SURE. MORE THAN
DOUBLE.
Q. MORE THAN DOUBLE?
A. MORE THAN DOUBLE.
Q. THIS INCOME IS DERIVED FROM THE
ENERGY BUSINESS, DID YOU KNOW THAT?
A. YES, I DID.
Q. FROM OIL AND GAS WELLS IN TEXAS?
3409
A. YES.
Q. WE HEARD THAT AS THE PRICE OF
ELECTRICITY GOES UP, THAT THE PROFITS FROM THE OIL
AND GAS BUSINESS GO UP. DOES THAT SOUND RIGHT TO
YOU?
A. YES. RIGHT. THAT WOULD CONFORM
WITH JUST BASIC STANDARD ECONOMIC THEORY.
Q. WHATEVER YOU WERE ABOUT TO SAY AND
DO, EXPLAIN TO THE JURY, HAS THAT, IN ANY WAY,
SHAPE OR FORM, TAKEN INTO ACCOUNT THE RATHER
UNBELIEVABLY DRAMATIC INCREASE IN OUR ELECTRICITY
BILLS LATELY?
A. NO, IT DOES NOT.
Q. SO WHAT YOU ARE ABOUT TO SAY MAKES
BELIEVE THAT WE ARE NOT PAYING THROUGH THE NOSE?
A. THAT IS CORRECT.
Q. ONCE YOU ARRIVE AT $187,000 THAT
YOU AVERAGE IN 1999 DOLLARS, WHAT DO YOU DO WITH IT
TO CALCULATE MR. BOEKEN'S FUTURE WAGE LOSS,

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ESPECIALLY THE PRESENT CASH VALUE?
BEFORE YOU ANSWER THE QUESTION, I
HAVE ASKED YOU TO ASSUME A COUPLE THINGS HERE.
HERE'S THE NEXT THING.
HE'S NOT WORKING ANY MORE. OKAY?
A. YES.
Q. HOW DO YOU GO ABOUT DOING THAT?
A. WHAT I DID IS THAT I JUST STARTED
IN 1999 AND SAID THAT I ROUNDED THE FIGURE TO
3410
$187,000, FROM THE 187,677.
SO I PLACED HIS EARNING CAPACITY AS
AN AVERAGE OF $187,000 A YEAR.
AND I TOOK THOSE NUMBERS AND I
TOTAL THEM UP AND I TOTAL THEM ON OUT TO AGE 66 AND
A HALF, WHICH IS HALFWAY BETWEEN 66 AND 67, AND I
DISCOUNTED THE FIGURES BACK TO THE PRESENT CASH
VALUE, USING A DIFFERENCE OF 2 PERCENT BETWEEN THE
INTEREST ON MONEY AND THE INFLATION AND WAGES OR
WHAT TODAY WOULD BE ABOUT A 5 PERCENT INTEREST ON
MONEY AND ABOUT A 3 PERCENT INCREASE IN WAGES FOR
INFLATION.
Q. WHERE DO YOU, TELL THE JURY WHERE
YOU GET A 3 PERCENT PER WAGES ON INFLATION NUMBER?
A. THAT IS APPROXIMATELY THE CURRENT
RATE IN THE UNITED STATES AND IT HAS BEEN THAT WAY
FOR THE LAST FEW YEARS AND THE PROJECTIONS ARE FROM
THE FEDERAL GOVERNMENT THAT IT'S GOING TO CONTINUE
AT AROUND THAT RATE FOR THE FORESEEABLE FUTURE.
Q. ON THESE THREE PERCENT ANNUAL
INCREASES IN WAGES, ARE THOSE FOR PEOPLE WHO
PACKAGE OIL AND GAS DEALS OR IS IT FOR PEOPLE WHO
ARE COURT REPORTERS OR IS IT FOR POLICE OFFICERS,
WHO IS IT FOR?
A. IT'S REALLY FOR MORE OR LESS KIND
OF ALL OF THE ABOVE.
IT WOULD BE THE AVERAGE FOR
EVERYBODY ALL PUT TOGETHER. IT IS JUST SIMPLY
3411
SAYING THAT IN A MONETARY ECONOMY, WHERE PRICES
RISE AT AROUND 3 PERCENT PER YEAR, EACH PERSON, ON
AVERAGE, HAS THE OPPORTUNITY AND PROBABLY WILL
SHARE THE EXPERIENCE OF HAVING AROUND A 3 PERCENT
INCREASE OF WAGES. THERE ARE SOME PEOPLE, FOR
EXAMPLE, WHO MAY HAVE A SEVERAL HUNDRED PERCENT
INCREASE IN WAGES AND MAYBE SOME PEOPLE HERE AND
THERE THAT THEIR WAGES WILL FALL FROM YEAR TO YEAR.
BUT ON AVERAGE, THAT PEOPLE WILL
ENJOY INCREASES IN WAGES PROBABLY IN THE AREA OF
THREE, MAYBE AS HIGH AS FOUR PERCENT.
Q. IF YOU FIGURE THAT MR. BOEKEN'S
FIELD, IF YOU THROW IT IN A POT AND AVERAGE IT OUT
WITH EVERYTHING ELSE THERE IS, AND IT GOES UP 3
PERCENT A YEAR, BUT YOU CAN INVEST YOUR MONEY AT 5
PERCENT A YEAR, IS THAT WHAT YOU DID?
A. THAT'S WHAT I DID.
Q. LET'S STAY THERE FOR A SECOND. WHY
5 PERCENT, WHERE DO YOU GET THAT?
A. THAT'S THE CURRENT RATE OF INTEREST
ON UNITED STATES TREASURY SECURITIES MATURING OUT
FOR APPROXIMATELY THE NEXT 20 YEARS. IT'S LESS FOR
ONE, TWO AND THREE YEARS. BUT WHEN YOU GET TO THE
TEN-YEAR UNITED STATES TREASURY SECURITY, IT'S JUST

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25 A HAIR OVER 5 PERCENT, LESS THAN TEN YEARS IS A
26 LITTLE LESS THAN 5 PERCENT. WHEN YOU BLEND IT
27 TOGETHER, THE AVERAGE RATE, I THINK, IS FAIRLY PUT
28 AT ABOUT A 5 PERCENT AVERAGE RETURN.
3412
1 Q. WHY USE SOMETHING LIKE U.S.
2 SECURITIES, AREN'T THERE OTHER INVESTMENTS THAT PAY
3 MORE?
4 A. THERE ARE OTHER INVESTMENTS BUT
5 WHETHER THEY PAY MORE OR NOT IS ALWAYS A QUESTION
6 MARK. BECAUSE EVERY HIGHER RATE THAT ONE SEES,
7 THERE IS ALSO MORE RISK. WITH A HIGHER RATE COMES
8 RISK. AND WITH THAT RISK, THERE MAY NOT BE THE
9 RETURN THERE.
10 SO IF SOMEBODY OFFERS YOU A 7
11 PERCENT RETURN OR AN 8 PERCENT RETURN ON A SECURITY
12 AND THAT SECURITY IS SELLING ON THE SAME DAY IN THE
13 MONEY MARKETS OF THE UNITED STATES WITH A FIVE
14 PERCENT SECURITY, LIKE THE U.S. TREASURY, THE ONLY
15 WAY THOSE HIGHER RATES, THOSE OTHER SECURITIES CAN
16 BE SOLD IS TO PAY PEOPLE ENOUGH MONEY TO TAKE THE
17 RISK.
18 SO ESSENTIALLY, WHEN YOU ADJUST FOR
19 THE RISK, ALL THE INTEREST RATES ARE EQUIVALENT TO
20 THE GOVERNMENT RATE AND THAT'S WHY THE UNITED
21 STATES TREASURY SECURITIES ARE THE MOST WIDELY
22 ISSUED AND PURCHASED SECURITIES IN THE WORLD.
23 Q. WELL, A COUPLE YEARS AGO, WERE
24 THERE TIMES, A COUPLE YEARS AGO, WHEN YOU WERE
25 TESTIFYING IN TRIALS, SORT OF LIKE THIS?
26 A. YES.
27 Q. AND WERE THERE TIMES, A COUPLE
28 YEARS AGO, WHEN YOU WOULD BE DISCUSSING WHY
3413
1 TREASURY BILLS WERE THE WAY TO GO?
2 A. YES.
3 Q. AND WERE THERE TIMES WHEN LAWYERS
4 WOULD CROSS-EXAMINE YOU AND SAY WHY IN THE WORLD
5 WOULD YOU PUT YOUR MONEY IN TREASURY BILLS AT 5
6 PERCENT WHEN YOU COULD GO WITH, GO FOR DOT COM AND
7 GET A TRILLION PERCENT?
8 A. OH, SURE, I AM ASKED THOSE
9 QUESTIONS WHEN THE DOT COM'S ARE GOING STRAIGHT UP
10 AND I AM NEVER ASKED THOSE QUESTIONS WHEN THEY ARE
11 GOING DOWN. BUT THE UNITED STATES TREASURY
12 SECURITIES ARE ALWAYS THERE, PAYING 6 PERCENT AND
13 THERE ARE PROBABLY A LOT OF PEOPLE THAT WISH THEY
14 WOULD HAVE KEPT THE MONEY AT 6 PERCENT HERE IN THE
15 YEAR 2000 RATHER THAN TRYING TO CHASE THE -- THOSE
16 SPECULATIVE RATES OF RETURN.
17 Q. HAS "GO TO DOT COM" CHANGED ITS
18 NAME TO "WHERE DID YOU GO DOT COM"?
19 OKAY. I GUESS WE MADE THE POINT,
20 SO HERE WE ARE. WAGES GO UP, THE WHOLE GAMUT OF
21 THREE PERCENT A YEAR, BUT YOU CAN EARN MORE ON THE
22 MONEY THROUGH U.S. T-BILLS AT 5 PERCENT A YEAR?
23 A. YES.
24 Q. SO IF YOU SUBTRACT ONE FROM THE
25 OTHER, DOES THAT GIVE YOU SOMETHING CALLED A NET
26 DISCOUNT RATE?
27 A. YES, IT DOES.
28 Q. 5 MINUS 3 EQUALS 2?
3414

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A. 2.
Q. 2 PERCENT NET DISCOUNT RATE?
A. THAT IS RIGHT.
Q. WHAT DID YOU DO WITH THAT?
A. YOU SIMPLY TAKE, AND TAKE ALL THOSE FUTURE EARNINGS, THE 187,000 A YEAR RISING THREE PERCENT EACH YEAR, TAKING IT OUT FOR THE NEXT TEN YEARS UNTIL HE WOULD BE AGE 66 AND A HALF AND DISCOUNT EACH OF THOSE BACK TO THEIR PRESENT VALUE AT A RATE OF 2 PERCENT. THAT'S WHAT'S DONE WITH EACH OF THE FUTURE TEN YEARS OF LOST EARNINGS TO GET THE PRESENT VALUE OR THE AMOUNT OF MONEY ONE WOULD NEEDED TO INVEST AT INTEREST TO REPLACE THE FURTHER LOSS AND ALSO TO PAY FOR THE LAST COUPLE YEARS' OF PAST LOSS.
Q. HAVE YOU DONE THAT?
A. YES, I HAVE.
Q. COULD YOU WRITE IT DOWN ON THIS PIECE OF PAPER SO WE WILL REMEMBER AFTER YOU ARE DONE, PLEASE.
A. THE PRESENT VALUE OF THE ECONOMIC LOSS IS $2,118,599.
Q. SOMEPLACE DOWN THERE WOULD YOU PUT IN WHAT YOU USED FOR A NET DISCOUNT RATE, PLEASE.
A. SURE. 2 PERCENT.
Q. SO HERE'S THE QUESTION. IF YOU ARE RIGHT AND IF WAGES CONTINUE TO GO UP AT 3 PERCENT AND T-BILLS CONTINUE TO PAY FIVE PERCENT, DO YOU

3415

THINK YOU ARE RIGHT ABOUT THOSE TWO THINGS?
A. YES.
Q. IF WE TOOK $2,118,599 AND PUT IT INTO T-BILLS, AND WE DEDUCTED, ARE WE GOING TO DEDUCT YEARLY OR MONTHLY?
A. MONTHLY.
Q. IF WE DEDUCTED MONTHLY, MONTHLY LOOKS LIKE ABOUT 15,000 BUCKS?
A. YES.
Q. IF WE DEDUCTED MONTHLY, THE MONTHLY AMOUNT, THAT WOULD ADD UP TO $187,000 A YEAR. AT 66 AND A HALF YEARS, WHICH IS HALFWAY BETWEEN THE TWO RETIREMENT AGES MR. BOEKEN MENTIONED, WHAT WOULD BE LEFT?
A. NOTHING. IT WOULD ALL BE USED.
Q. ON THAT DAY?
A. ON THAT DAY. IT WOULD WORK OUT EXACTLY, AT THAT LAST MONTH, AT AGE 66 AND ONE-HALF, THE LAST WITHDRAWAL HE WOULD MAKE ON THAT LAST MONTH WOULD DEPLETE THE BANK ACCOUNT TO ZERO.
Q. NOW, I'D JUST LIKE YOU TO ASSUME THE FOLLOWING: MR. BOEKEN TESTIFIED IN THIS VIDEO TAPED DEPO THAT HE REALLY LOVED WHAT HE DID, HE WAS AN ACTIVE KIND OF GUY AND BETWEEN 66 AND 67, HE WOULD OFFICIALLY RETIRE BUT WOULDN'T COMPLETELY RETIRE, HE WOULD CERTAINLY KEEP HIS HAND IN IT. HAVE YOU TAKEN ANY OF THAT INTO ACCOUNT AFTER 66 AND A HALF?

3416

A. NO.
Q. THAT'S ALL THE QUESTIONS I HAVE. THANK YOU VERY MUCH.
MR. PIUZE: BEFORE MR. LEITER ASKS, CAN I PICK A NUMBER ON THIS AND PUT AN EXHIBIT NUMBER ON

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6 IT.
7 THE CLERK: I HAVE 10,004.
8 MR. PIUZE: EXCELLENT.
9
10 (EXHIBIT 10,004, DIAGRAM,
11 MARKED FOR I.D.)
12
13 CROSS-EXAMINATION
14
15 BY MR. LEITER:
16 Q. GOOD AFTERNOON, DOCTOR.
17 A. GOOD AFTERNOON.
18 Q. IT'S GETTING A LITTLE CROWDED HERE.
19 NOW, WHAT YOU HAVE CALCULATED HERE,
20 AS I UNDERSTAND IT, IS YOU HAVE LOOKED AT MR.
21 BOEKEN'S INCOME GOING BACK ABOUT TEN YEARS; RIGHT?
22 A. YES, I HAVE.
23 Q. FROM THE SOURCES THAT YOU TALKED
24 ABOUT WITH MR. PIUZE.
25 AND THEN YOU CAME UP WITH A PRESENT
26 VALUE NUMBER FOR EACH OF THOSE YEARS; CORRECT?
27 A. THAT IS RIGHT.
28 Q. OKAY. AND THEN YOU CAME UP WITH AN
3417
1 AVERAGE OF THE TEN YEARS; IS THAT RIGHT?
2 A. YES, SIR.
3 Q. LET'S STOP THERE FOR JUST A MINUTE.
4 NOW, YOU HAVEN'T DONE ANY
5 INDEPENDENT INVESTIGATION OF MR. BOEKEN'S FINANCIAL
6 CONDITION, HAVE YOU?
7 A. NO.
8 Q. YOU RELIED ON THE MATERIALS THAT
9 WERE GIVEN TO YOU; CORRECT?
10 A. YES.
11 Q. AND FOR SEVERAL OF THOSE YEARS, YOU
12 RELY ON WHAT'S LISTED HERE AS TAX RETURNS; RIGHT?
13 A. YES, SIR.
14 Q. BUT YOU DIDN'T SEE THE WHOLE TAX
15 RETURN FOR ANY OF THOSE YEARS; IS THAT CORRECT?
16 A. THAT IS CORRECT.
17 Q. YOU SAW A COUPLE OF PAGES FROM EACH
18 YEAR?
19 A. YES, I DID.
20 Q. THAT WERE PROVIDED TO YOU BY
21 COUNSEL?
22 A. YES.
23 Q. NOW, THOSE PAGES THAT YOU GOT OF
24 THE TAX RETURNS WEREN'T SIGNED, WERE THEY?
25 A. NO.
26 Q. THEY WEREN'T SIGNED BY MR. BOEKEN?
27 A. NO, THEY ARE NOT SIGNED.
28 Q. AND THEY WERE JOINT RETURNS WITH
3418
1 MR. AND MRS. BROKEN; CORRECT?
2 A. YES.
3 Q. AND THEY WEREN'T SIGNED BY
4 MRS. BROKEN EVEN?
5 A. NO.
6 Q. AND THEY WEREN'T SIGNED BY A TAX
7 PREPARER, ALTHOUGH THERE'S OFTEN A TAX PREPARER'S
8 NAME TYPED IN; IS THAT CORRECT?
9 A. THAT IS CORRECT.
10 Q. AND CAN YOU TELL FROM LOOKING AT

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11 THESE WHETHER THESE WERE OBTAINED FROM THE INTERNAL
12 REVENUE SERVICE?
13 A. NO. I CAN'T, BUT I SEE NO I.R.S.
14 STAMPS ON THEM.
15 Q. OKAY. SO YOU DON'T KNOW WHETHER
16 THESE PIECES OF PAPER WERE THE ACTUAL RETURNS THAT
17 WERE FILED, DO YOU?
18 A. I CANNOT SAY.
19 Q. THEY MAY BE, THEY MAY NOT BE, YOU
20 JUST DON'T KNOW?
21 A. I CANNOT SAY.
22 Q. BUT THESE WERE THE PAPERS THAT YOU
23 GOT FROM COUNSEL?
24 A. YES.
25 Q. NOW, YOU MENTIONED ALSO THAT
26 MR. BOEKEN, YOU GOT SOME NUMBERS FROM A BANKRUPTCY
27 FILING?
28 A. I WAS PROVIDED THOSE NUMBERS BY MR.
3419
1 PIUZE BUT HE TOLD ME THAT'S WHERE THEY ORIGINATED.
2 Q. AND THAT'S A BANKRUPTCY FILING BY
3 MR. AND MRS. BROKEN, ISN'T THAT RIGHT?
4 A. THAT'S MY UNDERSTANDING.
5 Q. THIS IS DEFENSE EXHIBIT 797.
6 YOUR HONOR, I HAVE A RED RIBBON
7 COPY OF DEFENDANT'S EXHIBIT 7097 WHICH I OFFER.
8 THE COURT: VERY WELL.
9 MR. PIUZE: AS TO THE ENTIRE THING, YOUR
10 HONOR, I THINK WE SHOULD TABLE IT AS TO THE ENTIRE
11 DOCUMENT.
12 THE COURT: MARKED FOR IDENTIFICATION
13 PURPOSES ONLY. THE EXHIBIT NUMBER? DO WE HAVE AN
14 EXHIBIT NUMBER ON THAT?
15 MR. LEITER: YES, DEFENSE 7097.
16
17 * (EXHIBIT 7097, TAX DOCUMENT,
18 MARKED FOR I.D.)
19
20 THE COURT: THANK YOU, COUNSEL.
21 Q BY MR. LEITER: I'D LIKE TO SHOW
22 YOU ONE PAGE, I'D LIKE TO SHOW YOU ONE PAGE FROM
23 THIS. FIRST, CAN YOU TELL FROM LOOKING AT THIS
24 WHEN IT APPEARS TO HAVE BEEN FILED?
25 THAT'S A DISCHARGE.
26 A. IT LOOKS LIKE JUNE 17TH, 1992.
27 Q. OKAY. SO A FILING DATE OF A
28 BANKRUPTCY PETITION FROM MR. AND MRS. BROKEN ON
3420
1 JUNE 17TH, 1992?
2 A. YES.
3 Q. OKAY. I'D LIKE TO FLIP TO THE PAGE
4 THAT'S TABBED AND IS THAT THE PAGE OF THIS
5 BANKRUPTCY PETITION THAT INDICATES MR. AND
6 MRS. BOEKEN'S CURRENT INCOME AS OF JUNE 1992?
7 A. YES, IT APPEARS SO.
8 Q. AND WHAT DOES IT LIST AS THE
9 CURRENT GROSS WAGES, SALARY AND COMMISSIONS OF MR.
10 AND MRS. BROKEN AS OF JUNE 1992 WHEN THIS PETITION
11 WAS FILED?
12 A. $7,000.
13 Q. $7,000 A MONTH IN JUNE OF 1992.
14 NOW, IF WE WERE TO TURN THAT $7,000 A MONTH INTO AN
15 ANNUAL FIGURE FOR INCOME, WHAT WOULD WE GET?

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A. $84,000.
Q. $84,000?
A. YES.
Q. AND THE NUMBER YOU HAVE FOR 1992 IS
$234,000; IS THAT RIGHT?
A. YES.
Q. NOW, THE SECOND THING THAT YOU DO,
AFTER COMING UP WITH THE AVERAGE -- BY THE WAY,
BEFORE I MOVE TO THE SECOND THING YOU DID, YOU
HAVEN'T SEEN ANY SUPPORTING DOCUMENTATION FOR ANY
OF THESE YEARS OTHER THAN THESE TAX RETURNS AND
WHATEVER IT IS YOU WERE PROVIDED BY COUNSEL?
A. CORRECT.

3421

Q. NOW, THE SECOND THING THAT YOU DID
AFTER COMING UP WITH THE AVERAGE WAS TO PROJECT OUT
MR. BOEKEN'S INCOME FOR THE NEXT TEN YEARS, IS THAT
RIGHT?
A. YES.
Q. NOW, ACCORDING TO YOUR REPORT, YOU
HAVE INDICATED THAT IT IS YOUR UNDERSTANDING THAT
MR. BOEKEN IS SELF-EMPLOYED IN SALES OF OIL AND GAS
PROPERTIES AND SECURITIES?
A. THAT'S MY UNDERSTANDING.
Q. DO YOU UNDERSTAND EXACTLY WHAT IT
IS HE DOES?
A. NOT EXACTLY.
Q. DO YOU UNDERSTAND HOW HE GENERATES
INCOME?
A. NO.
Q. DO YOU UNDERSTAND WHAT KIND OF
SALES OF OIL AND GAS PROPERTIES AND SECURITIES HE
IS INVOLVED IN?
A. NO.
Q. BUT YOU ARE PROJECTING OUT HOW MUCH
MONEY HE MAY MAKE FROM THAT OVER THE NEXT TEN
YEARS; IS THAT RIGHT?
A. YES.
Q. NOW, YOU WERE ASKED BY MR. PIUZE,
RIGHT NOW, ELECTRICITY PRICES ARE GOING UP;
CORRECT?
A. YES.

3422

Q. AND YOU DIDN'T TAKE THAT INTO
ACCOUNT IN PROJECTING OUT MR. BOEKEN'S FUTURE
INCOME; IS THAT RIGHT?
A. THAT IS RIGHT.
Q. DO YOU KNOW HOW ELECTRICITY PRICES
MIGHT EFFECT MR. BOEKEN'S BUSINESS?
A. WELL, FROM AN ECONOMIST'S
STANDPOINT, THE EXPECTATION IS THAT IT WOULD
PROBABLY RAISE OIL PRICES AND PROBABLY WOULD RAISE
THE RETURNS FROM OIL AND GAS WELLS BECAUSE OF
SUBSTITUTION. PEOPLE WOULD BEGIN TO SUBSTITUTE OUT
ELECTRICITY AND TRY AND USE ALTERNATIVE FUELS, FOR
EXAMPLE, TRY TO MOVE TOWARDS NATURAL GAS, TRY TO
MOVE TOWARDS OTHER FUELS. AND SO OIL COMPANIES AND
PEOPLE WHO HAVE OIL AND GAS WELLS WILL FIND THEIR
WELLS TO BE MORE PROFITABLE THAN THEY WOULD AT
LOWER PRICES.
Q. BUT YOU DON'T EXACTLY UNDERSTAND
WHAT MR. BOEKEN SELLS AND HOW HE MAKES HIS MONEY?
A. NOT EXACTLY. I THINK I HAVE A

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21 GENERAL IDEA BUT I DON'T THINK I WOULD WANT TO
22 TESTIFY AS TO THE SPECIFICS OF EXACTLY HOW HE DOES
23 IT.
24 Q. OKAY. AND THE PRICE OF OIL WELLS
25 COULD FLUCTUATE IN ANY DIRECTION OVER THE NEXT 10
26 YEARS?
27 A. IT CAN GO UP OR DOWN OR STAY THE
28 SAME.
3423
1 Q. THE WELLS THAT MR. BOEKEN SELLS
2 COULD BE DRY WELLS?
3 A. I SUPPOSE THEY COULD BE DRY WELLS.
4 Q. INVESTORS COULD DECIDE TO PUT THEIR
5 MONEY ELSEWHERE?
6 A. THEY COULD.
7 Q. LIKE TREASURY BILLS?
8 A. YES.
9 Q. MR. BOEKEN'S PROFIT MARGIN, HOWEVER
10 HE MAKES HIS PROFIT, COULD CHANGE?
11 A. YES, IT COULD.
12 Q. NOW, THE JURY HAS HEARD TESTIMONY
13 ABOUT SALE OF OIL AND GAS INVESTMENTS BEING A RISKY
14 BUSINESS.
15 WOULD YOU AGREE WITH THAT?
16 A. YES, I WOULD.
17 Q. POSSIBLE MR. BOEKEN COULD END UP IN
18 BANKRUPTCY AGAIN IF HE CONTINUED WORKING IN THE
19 HYPOTHETICAL WORLD THAT YOU HAVE GIVEN TO THE JURY?
20 A. IT'S POSSIBLE.
21 Q. YOU JUST DON'T KNOW?
22 A. I DON'T KNOW.
23 MR. LEITER: NOTHING FURTHER.
24 MR. PIUZE: NO FURTHER QUESTIONS.
25 THE COURT: ALL RIGHT. RIGHT AT 4
26 O'CLOCK. THANK YOU, GOOD COUNSEL, ON BOTH SIDES.
27 SIR, YOU MAY STEP DOWN. YOU ARE
28 EXCUSED.
3424
1 LADIES AND GENTLEMEN, YOU ARE
2 EXCUSED -- YOU ARE NOT EXCUSED, BUT "YOU ARE
3 EXCUSED" MEANS YOU DON'T HAVE TO COME BACK AGAIN.
4 I SAY THAT TO WITNESSES SO WE WON'T SEE MR.
5 FORMUZIS AGAIN.
6 THANK YOU, SIR.
7 BUT I AM GOING TO LET YOU GO UNTIL
8 8:45 TOMORROW MORNING, BUT ONLY ON ONE CONDITION,
9 CHICKEN SOUP, RIGHT. OKAY.
10 THANK YOU.
11
12 (THE FOLLOWING PROCEEDINGS
13 WERE HELD IN OPEN COURT OUT
14 OF THE PRESENCE OF THE JURY:)
15
16 THE COURT: WE ARE ON THE RECORD OUTSIDE
17 THE PRESENCE OF THE JURY.
18 THE COURT IS GOING TO CONDUCT AN IN
19 CAMERA REVIEW OF CERTAIN DOCUMENTS THAT ARE IN A
20 CARDBOARD BOX AND A PLASTIC CONTAINER.
21 THESE ARE DOCUMENTS WHICH
22 PLAINTIFF'S COUNSEL HAS REPRESENTED TO THE COURT
23 ARE MATERIALS THAT WERE GIVEN TO AN EXPERT.
24 HIS NAME?
25 MR. PIUZE: BERNARD LEWAK.

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THE COURT: MR. LEWAK HAS TESTIFIED THAT HE DID NOT REVIEW THESE PARTICULAR MATERIALS. THE COURT HAS MADE A STATEMENT TO THE DEFENSE THAT, OF

3425

COURSE, IT MAKES NO JUDGMENT AS TO THE TRUTH OF THAT ASSERTION.
THE PLAINTIFF IS INDICATING THAT THESE DOCUMENTS ARE BASICALLY IRRELEVANT TO THE INQUIRY AND MAY CONTAIN INFORMATION THAT WOULD BE CONFIDENTIAL TO THE PLAINTIFF.
THE COURT HAS INDICATED THAT IT WOULD DO AN IN CAMERA REVIEW OF THESE PARTICULAR DOCUMENTS TAKING A RATHER LIBERAL VIEW TOWARDS DISCLOSURE, WHICH I WILL SAY ON THE RECORD.
BUT I WANT TO ASK THE DEFENSE ON THE RECORD WHAT IS IT THAT YOU ARE PARTICULARLY INTERESTED IN, WHAT DO YOU THINK MIGHT BE IN THESE DOCUMENTS THAT YOU WOULD BE PARTICULARLY INTERESTED IN AND NOT JUST IN TERMS OF GENERAL CATEGORIES, NOT PINNING YOU DOWN TO ANY SPECIFICS?
MR. CARLTON: WELL, YOUR HONOR, AGAIN, AS YOU KNOW, WE DON'T KNOW WHAT'S IN THERE.
BUT THIS IS, AS I UNDERSTAND IT, WHAT MR. LEWAK HAS TO SAY.
HE HAS -- HE ISN'T AN ACCOUNTANT.
HE HAS TESTIFIED AT HIS DEPOSITION THAT HE WAS PROVIDED CERTAIN MATERIALS AND HE REQUESTED CERTAIN MATERIALS AND WAS PROVIDED CERTAIN MATERIALS TO ENABLE HIM TO PREPARE TAX RETURNS FOR THE PLAINTIFF FOR THE YEARS 1998, '99 AND 2000.
AMONG THE THINGS HE REVIEWED IN

3426

ATTEMPTING TO DO THIS WERE THE TAX RETURNS THAT MR. FORMUZIS HAS JUST DESCRIBED AS WELL AS A 1998 TAX RETURN PREPARED BY ANOTHER ACCOUNTANT, JOSEPHINE TUBEROSI.
ALONG THE WAY, HE WAS INSTRUCTED BY MR. PIUZE TO FOCUS JUST ON THE YEAR 1998.
AND HE HAS LOOKED AT CERTAIN MATERIALS, NOT THE MATERIAL, APPARENTLY, THAT YOUR HONOR HAS, IN ORDER TO FIGURE OUT WHAT A CORRECT TAX RETURN FOR THE YEAR 1998 WOULD BE.
AND WHAT HE ENDED UP WITH WAS BASICALLY NOT MUCH.
HE HAD SOME BANK STATEMENTS, HE HAD THE INFORMATION ON THE PRIOR TAX RETURNS AND A VERY LITTLE BIT OF INFORMATION FROM THE PLAINTIFF HIMSELF.
FROM THAT, HE HAS ATTEMPTED TO CRAFT AN EVALUATION OR ANALYSIS OF HOW MUCH MONEY THE PLAINTIFF MADE IN THE YEAR 1998 AND THAT FIGURE TURNS OUT FROM HIS CALCULATIONS TO BE THE $167,000 THAT MR. FORMUZIS JUST TALKED ABOUT IN HIS CALCULATIONS HERE.
THAT ESTIMATE IS BASED ON ALMOST NO INFORMATION.
WHAT HE DID WAS LOOK AT BANK STATEMENTS, MR. BOEKEN TOLD HIM THAT ANY DEPOSIT THERE, THESE ARE BANK STATEMENTS FOR MR. BOEKEN'S BUSINESS, BY THE WAY, NOVA L.L.C., BROKEN SAYS, ANY

3427

DEPOSIT THERE IS INCOME. THAT'S THE ONLY WAY THAT

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MR. LEWAK KNOWS ANYTHING ABOUT MR. BOEKEN'S INCOME
IN THE YEAR 1998 IS THAT STATEMENT FROM THE
PLAINTIFF AND THE BANK STATEMENTS AND IT'S ONLY ONE
OF SEVERAL BANK ACCOUNTS THAT MR. BOEKEN HAD.
HE THEN WENT THROUGH AND LOOKED AT
CANCELED CHECKS AND ON HIS OWN DECIDED, WELL, THIS
IS A LEGITIMATE BUSINESS EXPENSE AND SHOULD BE AN
EXPENSE FROM THE BUSINESS BUT, AS IT TURNS OUT,
MANY, MAYBE EVEN MOST OF THE CHECKS ON THIS
BUSINESS ACCOUNT WERE WRITTEN FOR PERSONAL EXPENSES
OF MR. BOEKEN.
SO HE PUT THOSE IN ANOTHER PILE.
AND HE ENDS UP, AFTER THIS PROCESS
OF GOING THROUGH BANK STATEMENTS, ESSENTIALLY, WITH
THIS $167,000 FIGURE.
NOW, WHAT WE HAVE IN THOSE BOXES,
GOD KNOWS. BUT FROM WHAT I UNDERSTAND, IT MAY
INCLUDE RECORDS OF BUSINESS AND FINANCIAL
TRANSACTIONS FOR THE YEARS 1999 AND 2000.
NOW, THOSE WOULD BE RELEVANT, OF
COURSE, FOR EVALUATING INCOME FOR THOSE TWO YEARS.
BUT THAT MAY ALSO SHED A TREMENDOUS
AMOUNT OF LIGHT ON WHETHER MR. LEWAK'S ESTIMATES
AND EVALUATIONS OF INCOME IN 1998 WERE CORRECT.
THEY MAY SHED LIGHT ON MR. BOEKEN'S
REPRESENTATION THAT ANYTHING REFLECTED AS A DEPOSIT
IN THIS BUSINESS BANK ACCOUNT IS ACTUALLY INCOME TO
3428
HIM, AS OPPOSED TO, SAY, INVESTMENT CONTRIBUTIONS
MADE BY SOME OF THE INVESTORS IN HIS PROJECTS,
TRANSFERS FROM OTHER BANK ACCOUNTS, INTEREST,
WHATEVER.
AND IT MAY SHED, THE INFORMATION IN
THESE BOXES MAY SHED LIGHT ON DISTRIBUTIONS ON
EVALUATING AND IDENTIFYING THE SIGNIFICANCE OF THE
ACTUAL CHECKS THAT APPEAR IN THE BUSINESS BANK
ACCOUNT.
WE JUST DON'T KNOW ANYTHING REALLY,
OTHER THAN WHAT'S ON THE BANK STATEMENTS WE HAVE,
BOXES OF DOCUMENTS FOR THE IMMEDIATE SUCCEEDING
YEARS MAY CAST CONSIDERABLE LIGHT ON THE YEAR 1998
AND EVEN PRIOR YEARS.
THE COURT: ALL RIGHT.
HAS THE DEFENSE REQUESTED THESE
DOCUMENTS APART FROM LEWAK AND HIS USE OF THEM? IN
OTHER WORDS, IS THERE A DISCOVERY REQUEST OR
SOMETHING OUTSTANDING TO WHICH 1999 AND 2000
TRANSACTIONAL DOCUMENTS MAY ALSO BE DISCOVERABLE?
MR. CARLTON: INTERROGATORY AND DOCUMENT
REQUESTS WERE SERVED QUITE A LONG TIME AGO ASKING
FOR THE PLAINTIFF TO SPECIFY ANY LOSS, PAST AND
FUTURE DAMAGES, AND THEN TO PROVIDE DOCUMENTS THAT
WERE RELIED UPON IN MAKING THOSE ESTIMATES. THOSE
WERE SEPARATE AND APART FROM THE DOCUMENT REQUESTS
DIRECTED TO MR. LEWAK.
BUT WHAT WE WERE TOLD AT THE TIME
3429
THE WRITTEN DISCOVERY WAS SERVED QUITE A WHILE AGO,
WAS WE HAVEN'T MADE THAT CALCULATION YET AND THIS
WAS PROVIDED IN RESPONSE TO THAT DISCOVERY.
SO APPARENTLY THIS IS IT.
WELL, I WILL SAY THAT FOR THE TIME
BEING.

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7 THE COURT: MR. PIUZE, DO YOU WISH TO BE
8 HEARD ON THIS MATTER?
9 MR. PIUZE: YES, I DO.
10 LET ME JUST CORRECT SOMETHING MR.
11 CARLTON SAID, WHICH I AM SURE WAS INADVERTENT. AND
12 IT GOES LIKE THIS: THERE WAS A DOCUMENT REQUEST
13 WHICH WAS A -- WAS FINALLY DONE, BUT NO QUARRELS
14 WITH IT, THAT SAID LET'S SEE WHAT YOU ARE GOING TO
15 BASE YOUR WAGE STUFF ON, GENERALLY. I DON'T KNOW
16 IF THAT'S WHAT IT SAID, BUT I AM READY TO SAY THAT
17 IT BASICALLY WAS BROAD ENOUGH TO SAY THAT.
18 AT THE TIME WE HAD NOTHING.
19 AS THINGS CAME IN, THEY HAVE BEEN
20 PRODUCED. AT THE CROSS-EXAMINATION TRIAL,
21 CROSS-EXAMINATION DEPOSITION OF RICHARD BOEKEN,
22 WHICH WAS THE LAST ONE SHOWN TO THE JURY AND THE
23 COURT, ON THAT DAY, I TURNED OVER TO MR. CARLTON
24 ALL OF THE TAX RETURN DOCUMENTS WHICH MR. -- WHICH
25 DR. FORMUZIS HAD TODAY.
26 I GAVE THEM TO MR. CARLTON DURING
27 THE COURSE OF THAT DEPOSITION. MR. BOEKEN
28 IDENTIFIED THEM DURING THE COURSE OF THE
3430
1 DEPOSITION. THEY ARE EXHIBITS TO THE DEPOSITION
2 AND UNDOUBTEDLY, FOR SURE, THEY WERE TURNED IN.
3 MR. CARLTON: THAT IS CORRECT, YOUR
4 HONOR.
5 MR. PIUZE: SUBSEQUENT TO THAT TIME,
6 HERE'S WHAT HAS OCCURRED: I GOT MY HANDS ON A 1996
7 INCOME TAX RETURN WHICH I PREVIOUSLY HAD NOT HAD,
8 AND I PROVIDED THAT TO THE DEFENSE AS SOON AS I GOT
9 IT.
10 AND THEN SUBSEQUENT TO THAT TIME,
11 THE DEFENSE DID SOME DISCOVERY ON MS. TUBEROSI AND
12 THAT DISCOVERY WAS MULTI-FACETED AND INCLUDED A
13 PRODUCTION OF DOCUMENTS AND ALSO INCLUDED
14 DEPOSITION.
15 MS. TUBEROSI IS NOT AN ACCOUNTANT,
16 SHE IS A BOOKKEEPER.
17 AND I HAVE A FEELING SHE'S PRETTY
18 MUCH INCOMPETENT FROM WHAT I HAVE SEEN AND BEEN
19 TOLD.
20 MISS TUBEROSI HAD, WHAT I BELIEVE
21 TO HAVE BEEN A DRAFT OF AN INCOME TAX RETURN FROM
22 1998 AND IT CAME IN AT A VERY LOW NUMBER, WHETHER
23 IT IS 37,000, 73,000, I DON'T KNOW, BUT IT IS
24 NUMBERS OF THOSE MAGNITUDES.
25 AT THAT POINT, WHEN I -- FOR
26 VARIOUS REASONS, HAD ZERO CONFIDENCE IN
27 MS. TUBEROSI'S ABILITIES, I ASKED MY PERSONAL
28 ACCOUNTANT, C.P.A., A REAL C.P.A., BERNARD LEWAK,
3431
1 TO TAKE A LOOK AT THE DOCUMENTATION BECAUSE I
2 WANTED A REAL C.P.A. TO TAKE A LOOK AT THIS STUFF
3 AND TELL ME WHAT WAS WHAT.
4 MY ORIGINAL REQUEST TO MR. LEWAK
5 WAS THAT HE LOOKED AT '98, '99 AND 2000.
6 FOR TWO DIFFERENT REASONS, HE WAS
7 UNABLE TO FULFILL THAT TASK.
8 REASON NUMBER 1, HE'S IN THE MIDDLE
9 OF TAX SEASON. AND THE COURT WILL TAKE NOTICE, I
10 AM SURE, THAT LAST MONDAY WAS APRIL 16TH, THAT WAS
11 THE LAST DAY TO FILE TAXES AND MR. LEWAK WAS

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12 WORKING HIS TAIL OFF FOR ALL OF HIS CLIENTS TO GET
13 THEIR TAX RETURNS DONE.
14 REASON NUMBER 2, WHICH WAS MORE
15 SIGNIFICANT AND WHICH MR. LEWAK WILL TESTIFY WAS
16 MORE SIGNIFICANT, IS THAT MR. BOEKEN HAS A VERY
17 LIMITED ABILITY TO HELP. AND THAT LIMITED ABILITY
18 IS DUE TO HIS LACK OF FOCUSED CONCENTRATION,
19 MEMORY, AND PHYSICIAN STAMINA.
20 AND SO OVER A PERIOD OF TIME, WHEN
21 I WAS TRYING TO RIDE HERD ON THIS AND GET STUFF
22 DONE BECAUSE WE ARE APPROACHING TRIAL, IN LIMINE,
23 IN JURY SELECTION, IN TRIAL AND I WANT THIS STUFF
24 DONE, I AM SORT OF TRYING TO KICK A LITTLE TAIL
25 MYSELF, AND MR. BOEKEN JUST ISN'T COMING THROUGH
26 AND MR. LEWAK WOULD SAY, I NEED THESE EXACT FOUR
27 DOCUMENTS, AND MR. BOEKEN WOULD SAY, SURE -- BY THE
28 WAY, MR. LEWAK CAN TESTIFY TO ALL THIS, I AM NOT
3432
1 GOING TO TESTIFY TO IT. BUT MR. BOEKEN WILL SAY,
2 YEAH, I CAN GIVE YOU THOSE FOUR DOCUMENTS AND
3 MR. LEWAK WOULD SAY THE ONE THING I DON'T WANT IS
4 TOO MUCH PAPER BECAUSE UP IN THE MIDDLE OF THE TAX
5 SEASON, KEEP IT TO THE POINT. AND THE BOTTOM LINE
6 IS THESE TWO BOXES WERE DELIVERED.
7 MR. LEWAK WAS LESS THAN HAPPY,
8 ALTHOUGH I HAVEN'T LOOKED AT EITHER OF THOSE THINGS
9 EVER, I AM TOLD THAT ONE OF THEM IS BASICALLY A
10 BUNCH OF MEDICAL BILLS AND MAYBE GROCERY BILLS AND
11 JUNK LIKE THAT, TOTAL JUNK, AND THE OTHER MAY BE A
12 LITTLE MORE GERMANE.
13 THESE THINGS WERE BROUGHT IN BY MR.
14 BOEKEN AGAINST EXPRESS ORDERS TO BRING IN A BUNCH
15 OF JUNK. THEY WERE BROUGHT IN IN MR. BOEKEN'S
16 ATTEMPT TO PROVIDE HELP.
17 BUT WHAT HE PROVIDED WAS STATIC AND
18 CLUTTER. AND MR. LEWAK'S TESTIMONY IN THE
19 DEPOSITION AND THEN FINE-TUNED IN A COUPLE OF
20 DISCUSSIONS HERE, WAS THAT FORGET READ AND RELIED
21 ON VERSUS READ AND DIDN'T RELY ON, IT WAS NOT
22 REVIEWED. IT IS A BUNCH OF JUNK WHICH WASN'T
23 REVIEWED.
24 SO AS FAR AS THEIR ABILITY TO
25 CROSS-EXAMINE MR. LEWAK ON THE STUFF, IF HE NEVER
26 REVIEWED IT, THEY SHOULDN'T CROSS-EXAMINE HIM ON
27 IT. I DON'T KNOW WHAT'S IN THERE. BUT I HAVE A
28 FEELING, MOST OF IT, ONE BOX IS TOTALLY JUNK, AND
3433
1 THE OTHER BOX PROVIDES BASICALLY A BREACH OF MR.
2 BOEKEN'S PRIVACY.
3 PLEASE KEEP IN MIND THAT WE TRIED
4 TO GUARD THE NAMES OF HIS CLIENTELE ALONG THE WAY.
5 AND THAT IS STILL ONE OF THE
6 CONSIDERATIONS.
7 SO THAT'S WHAT I HAVE TO SAY.
8 AS I HAVE OBTAINED DOCUMENTS,
9 I HAVE TURNED THEM OVER TO ARNOLD & PORTER AS SOON
10 AS I HAVE GOTTEN THEM.
11 I HAVE NEVER SEEN THAT STUFF. THE
12 TWO OF US ARE EQUALLY IN THE DARK.
13 AND THAT'S IT FOR ME UNLESS THE
14 COURT HAS SOME DIRECT QUESTIONS.
15 THE COURT: MY ONLY QUESTION TO PLAINTIFF
16 WOULD BE, AT THIS POINT WOULD BE, EVEN THOUGH LEWAK

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17 STATES THAT HE CANNOT RELY ON ANY OF THE MATERIAL
18 FOR 1999 AND 2000, THOSE DOCUMENTS, DIDN'T EVEN
19 REVIEW IT, NONETHELESS, WOULD THERE BE AN
20 INDEPENDENT BASIS FOR WHICH THOSE DOCUMENTS OUGHT
21 TO BE GIVEN TO THE DEFENSE FOR THE PURPOSES, EVEN
22 IF LEWAK WERE NOT CROSS-EXAMINED ON THE MATERIAL?
23 MR. PIUZE: THAT'S A POINT. I DON'T
24 KNOW, LEGITIMATE POINT.
25 I DON'T KNOW THAT THE 99 AND 2000
26 DOCUMENTS ARE IN THERE, AND I JUST, JUST FOR
27 COMPLETENESS HERE, FORGIVE ME FOR BABBLING, BUT I
28 WANT TO ADD ONE THING THAT I FORGOT. AS TIME WENT
3434
1 ON, THOUGH MY SELF-STATED TAIL KICKING EFFORTS WERE
2 INEFFECTIVE, I FINALLY TRIAGED THE SITUATION AND
3 SAID THERE'S NO WAY WE ARE EVER GOING TO GET THIS
4 DONE, CONCENTRATE ON '98. LET'S AT LEAST GET ONE
5 OF THEM DONE.
6 THE COURT: I UNDERSTAND THAT. I GOT
7 THAT.
8 OKAY.
9 MR. PIUZE: SO AS FAR AS THE INDEPENDENT,
10 IS IT INDEPENDENTLY MAYBE VALUABLE TO THE DEFENSE,
11 YES, FAIR POINT. I DON'T KNOW -- I DON'T EVEN KNOW
12 WHAT THEY HAVE GOT THERE. NO, I CAN'T EVEN TELL
13 YOU WHAT'S IN THERE.
14 THE COURT: AND NEITHER CAN I.
15 OKAY.
16 MR. CARLTON: AGAIN, YOUR HONOR, MAY WELL
17 HAVE INDEPENDENT VALUE, DON'T KNOW. BUT I CAN SAY
18 THIS. WHAT MR. LEWAK HAD TO WORK WITH IN CRAFTING
19 THE 1998 TAX RETURN THAT HE DID WAS ALMOST NOTHING.
20 HE HAD SEVERAL BOXES OF INFORMATION THAT THE
21 PLAINTIFF AT LEAST THOUGHT WAS RELEVANT TO HIS
22 TASK. HIS DECISION NOT TO REVIEW THAT, WHETHER IT
23 WAS BASED ON BEING TOO BUSY AT THE TIME OR
24 WHATEVER, IS SOMETHING THAT I THINK IS RELEVANT AND
25 CERTAINLY GIVEN THE ALMOST TOTAL PAUCITY OF
26 EVIDENCE TO SUPPORT WHAT HE DID COME UP WITH, JUST
27 ABOUT ANYTHING THAT MIGHT CAST LIGHT, FURTHER LIGHT
28 ON WHAT HAPPENED IN MR. BOEKEN'S FINANCIAL
3435
1 CONDITION IN 1998 IS GERMANE TO DAMAGES AND GERMANE
2 TO THE CREDIBILITY OF THE TAX RETURN THAT MR. LEWAK
3 CAME UP WITH.
4 MR. PIUZE: COULD I TAKE 30 SECONDS.
5 THE COURT: YES, SIR.
6 MR. PIUZE: JUST SO THE COURT DOESN'T GET
7 THE WRONG IMPRESSION, BURNEY LEWAK IS YOUR NEXT
8 CONSERVATIVE C.P.A. TYPE AND THAT'S THE WAY HE ACTS
9 WITH ME. HE TESTIFIED IN HIS DEPOSITION HE HAD
10 ENOUGH INFORMATION TO MAKE HIMSELF FEEL -- IT ISN'T
11 THAT, HEY, THIS WAS A DOWN AND DIRTY AND I RAN OUT
12 OF TIME, HIGH THOUGHT THAT HE HAD DONE A REAL,
13 HONEST, FINAL TAX RETURN FOR MR. BOEKEN FOR '98 AND
14 THEY ARE GOING TO AMEND WHAT TUBEROSI DID AND SEND
15 IT IN.
16 THE COURT: SO THEY WOULD GO BACK AND --
17 THE -- WAS THE 1998 TAX RETURN EVER FILED?
18 MR. PIUZE: THE ANSWER IS YES.
19 MR. BOEKEN TOLD MR. LEWAK YES. I WAS SKEPTICAL OF
20 THAT BECAUSE I AM SKEPTICAL OF SOME OF THE THINGS
21 MR. BOEKEN SAYS NOWADAYS, NOT BECAUSE I THINK HE IS

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22 DISHONEST, BECAUSE I THINK HE IS DISABLED AND
23 MR. LEWAK, SUBSEQUENT TO THE DEPOSITION, CALLED THE
24 FRANCHISE TAX BOARD AND THEY, IN FACT, TOLD HIM IN
25 THAT EVENT.
26 THE COURT: WELL, WE WILL TAKE A LOOK AT
27 IT AND WE WILL GET BACK TO YOU AS SOON AS WE HAVE
28 COMPLETED OUR WORK. CERTAINLY BY THE END OF
3436
1 BUSINESS TOMORROW.
2 THANK YOU VERY MUCH.
3 MR. PIUZE: I NEED THE FOLLOWING
4 GUIDANCE, PLEASE.
5 TOMORROW IS THE DAY WHEN MR. LEWAK
6 WOULD BE SCHEDULED TO BE A WITNESS.
7 AND THERE ARE SEVERAL WAYS OF
8 HANDLING IT. ONE IS JUST TELL HIM TO STAND DOWN
9 FOR A MINUTE, THE OTHER WAY IS BRING HIM IN AND IF
10 THEY HAVE FURTHER CROSS-EXAMINATION OF HIM BASED ON
11 THE DOCUMENT STUFF THEY CAN BRING HIM BACK LATER, I
12 AM PUTTING THAT OUT. I DON'T HAVE -- I AM NOT
13 TRYING TO SELL ONE SIDE OR THE OTHER, BUT THAT'S
14 WHAT WE ARE LEFT WITH.
15 THE COURT: SO IS COUNSEL SUGGESTING TO
16 ME THAT IF WE DECIDED TO POSTPONE HIS TESTIMONY
17 THAT COUNSEL WOULD REST AND THE OTHER SIDE WOULD
18 BEGIN THEIR CASE AND THEN WE WOULD BRING -- PUT
19 LEWAK ON THE STAND EARLY IN THE PRESENTATION, OUT
20 OF ORDER OR WHAT IS BEING SUGGESTED?
21 MR. PIUZE: I AM NOT ACTUALLY
22 SUGGESTING -- NEITHER. JUST LETTING THE COURT KNOW
23 THAT THERE'S A POTENTIAL HOLE THERE, BECAUSE IF HE
24 COMES IN AND TESTIFIES TOMORROW, AND IF THE COURT
25 DOES ALLOW SOME OF THE STUFF OUT, IT WILL TAKE TIME
26 FOR THAT, TO DIGEST IT, AND I DON'T KNOW WHEN THEY
27 WOULD FINISH THEIR CROSS-EXAMINATION. IF THEY
28 WANTED TO DO IT LATER, IT'S OKAY WITH ME.
3437
1 MR. LEITER: GIVE US ONE MOMENT, YOUR
2 HONOR.
3
4 (INTERRUPTION IN PROCEEDINGS.)
5
6 MR. CARLTON: AGAIN, THINKING ON THE FLY
7 HERE, WHAT ABOUT THIS SUGGESTION: YOU CALL LEWAK
8 AT THE CONCLUSION OF OUR CASE, INSTEAD OF IN THE
9 MIDDLE OF IT SOMETIME, OR US CROSSING HIM, GOD
10 KNOWS HOW LONG AFTER HE GIVES HIS DIRECT, WHY NOT
11 JUST CLOSE WITH THE EXCEPTION OF MR. LEWAK, WHO
12 COULD BE CALLED WHEN OUR CASE IS OVER.
13 MR. PIUZE: WELL, I'D ACTUALLY RATHER NOT
14 DO THAT. I WOULD RATHER BUTTON UP AND LET THE JURY
15 KNOW WHERE THE 167 CAME FROM. THAT WOULD BE MY
16 PREFERENCE.
17 THE COURT: I AM NOT GOING TO CLOSE YOUR
18 CASE.
19 WELL, FORMUZIS -- IT'S FORMUZIS,
20 LEWAK AND THAT'S IT?
21 MR. PIUZE: NO, YOUR HONOR. WE HAVE
22 DR. SARNA TOMORROW, TREATING ONCOLOGIST, AND THEN
23 DOCTOR -- MR. JOHNSON. MR. JOHNSON IS THE
24 ECONOMIST THAT WE ARE TALKING ABOUT WHO'S DOING THE
25 FINANCIAL CONDITION STUFF. AND I AM ABOUT READY TO
26 WALK OUT OF THIS ROOM, CALL HIM AND TELL HIM TO GET

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27 DOWN HERE FOR DEPOSITION TOMORROW MORNING.
28 SO OF THE THREE LIVE WITNESSES THAT
3438
1 I HAVE GOT LEFT, TWO ARE SORT OF NOT TOTALLY NAILED
2 DOWN RIGHT NOW.
3 THE COURT: WELL, LEWAK, HERE'S WHAT I
4 CAN DO, I WILL LET YOU PUT LEWAK ON THE WITNESS
5 STAND AND TAKE HIM IN ORDER AND DIRECT HIM AS YOU
6 WISH ON DIRECT EXAMINATION, ALLOW CROSS-EXAMINATION
7 TO THE EXTENT THAT YOU FEEL THAT YOU CAN
8 CROSS-EXAMINE HIM. BUT EXCUSE HIM -- BUT NOT
9 EXCUSE HIM AS A WITNESS AND ORDER HIM BACK AND, OF
10 COURSE, HE WOULD HAVE TO COME BACK BECAUSE YOUR
11 CROSS-EXAMINATION WOULD NOT BE COMPLETED. AND IT
12 WOULD PUT THE PLAINTIFF'S CASE AT RISK IF YOU HAVE
13 A WITNESS OUT THERE THAT YOU NEVER GOT TO FULLY
14 CROSS-EXAMINE.
15 SO I WOULD LEAVE YOUR
16 CROSS-EXAMINATION OPEN. BUT I WOULD PUSH YOU TO
17 GET READY FOR AND TO DO IT QUICKLY AND NOT GET DEEP
18 INTO YOUR CASE BEFORE YOU -- IN OTHER WORDS, NOT
19 ALLOW YOU TO JUST PUT IT OFF AND ULTIMATELY ACHIEVE
20 THE RESULT OF GETTING TO THE END OF YOUR CASE IN
21 ANY EVENT.
22 FAIR ENOUGH.
23 OKAY. SO THEN WE ARE GOING TO HAVE
24 A WITNESS COME IN HERE -- WE ARE GOING TO HAVE ONE
25 PERSON BEING DEPOSED TOMORROW STARTING IN THE
26 MORNING.
27 MR. LEITER: I THINK WE HAD AGREED THAT
28 WE WOULD TRY TO GET THE REPORT TONIGHT, GIVE US
3439
1 SOME TIME DO UNDERSTAND IT AND DEPOSE HIM IN THE
2 AFTERNOON TOMORROW.
3 THE COURT: ALL RIGHT. TOMORROW
4 AFTERNOON. AND THEN HE WOULD GO ON THE WITNESS
5 STAND WEDNESDAY MORNING.
6 MR. PIUZE: YES.
7 THE COURT: AND WE WOULD ANTICIPATE THAT
8 THE PLAINTIFF WOULD BE RESTING WEDNESDAY NOON OR
9 SO.
10 MR. PIUZE: NO. AND THE REASON NO IS
11 BECAUSE WE HAVE SOME TRANSCRIPT TESTIMONY TO READ.
12 AS FAR AS THE LIVE TESTIMONY, THOUGH, I HAVE JUST
13 INFORMED THE COURT OF THE REMAINDER OF THE LIVE
14 TESTIMONY.
15 THE COURT: WE ARE IN GOOD SHAPE.
16 YOU ALL HAVE A GOOD EVENING.
17
18 (AT THIS TIME, THE PROCEEDINGS
19 IN THE ABOVE-ENTITLED MATTER
20 CONTINUED TO TUESDAY, APRIL
21 24TH, 2001 AT 9:30 A.M.)
22
23
24
25
26
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28
3440
1 MASTER INDEX
2

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3 DAY DATE PAGE VOLUME
4 MONDAY APRIL 23RD, 2001 3359 21
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6
7
8
9 W I T N E S S E S
10
11 WITNESS DIRECT CROSS REDIRECT RECROSS
12 BOEKEN, 3360 3366 3374 3378
JUDY 3379
13
14 FORMUZIS, PETER 3381 3416
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5 DESCRIPTION IDENTIFICATION EVIDENCE VOL.
6 10,004 - DIAGRAM 3416
7 7097 - TAX DOCUMENT 3419
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